157-368

157-368

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 874.

JOHN H. COLVIN, APPELLANT,

vs.

THE CITY OF JACKSONVILLE AND D. U. FLETCHER, AS MAYOR THEREOF.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

FILED DECEMBER 26, 1894.

(15,758.)

(15,758.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 874.

JOHN H. COLVIN, APPELLANT,

vs.

THE CITY OF JACKSONVILLE AND D. U. FLETCHER, AS MAYOR THEREOF.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
Affidavit of John H. Colvin	10	5
Amended bill of complaint	11	5
Motion to dismiss amended bill	22	11
Answer of City of Jacksonville and mayor to amended bill	23	12
Exceptions to answer	43	23
Affidavit of John H. Colvin	45	23
Stipulation to submit exceptions upon briefs, &c.	46	24
Motion for writ of injunction, &c.	47	25
Motion for leave to file amendments to amended bill	49	25
Amendments to amended bill	51	26
Affidavit of John R. Thurber	56	28
Duncan U. Fletcher	59	30
H. Bisbee	61	30
E. W. Vail	63	31
Charles F. Verelst	64	32
A. G. Hartridge	66	33

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JANUARY 24, 1895.

	Original.	Print.
Notice of hearing of motion for receiver, &c.	68	34
Notice of renewal of motion for injunction, &c.	69	35
Motion to set aside order denying motion for injunction, &c.	70	35
Decree dismissing bill, &c.	71	36
Motion for leave to amend, &c.	72	36
Petition for appeal and order allowing same	74	37
Assignment of errors	75	38
Bond on appeal	77	39
Citation (copy)	79	40
Clerk's certificate to record	81	40
Opinion	82	41
Clerk's certificate to opinion	91	45

1 To the honorable judges of the circuit court of the United States for the northern district of Florida, in equity:

John H. Colvin, who is a citizen of the State of Illinois, of the city of Chicago, county of Cook, in said State, exhibits this his bill of complaint against the city of Jacksonville, a municipal corporation organized and existing under the laws of the State of Florida, and against D. U. Fletcher, a citizen of the State of Florida and claiming to be the mayor of the said city, and against —— ——.

And thereupon your orator complains and alleges—

1st. That he is the owner of property, real and personal, situate, lying, and being within the corporate limits of the city of Jacksonville, a municipal corporation organized and existing under the laws of the State of Florida, and that the said property is subject to taxation by the said city and the authorized officers thereof.

2nd. That the city council of the said city, consisting of sixteen members, have recently by an ordinance of the said council authorized and provided for the issuing by the said city of bonds of the said city to the amount of one million dollars ($1,000,000.00), to bear interest at the rate of five per cent. (5%) per annum
2 and payable 30 years after date, said interest payable semi-annually, and that your orator's said property within the city limits of the said city of Jacksonville to the amount in value of about $10,000.00 is subject to assessment for taxes to raise revenue with which to pay the interest on the said bonds and to provide a sinking fund for the payment of the principal of said bonds, and that if the said bonds are issued your orator's said property will be assessed and taxed as aforesaid.

3rd. Your orator further alleges that the said city of Jacksonville is endeavoring to negotiate the sale of the said bonds of the said city of the par value of $1,000,000.00 and has advertised for bids for said bonds, and that the said city of Jacksonville, through its officers, is now engaged in an effort to negotiate the sale of the said bonds.

4th. Your orator charges and alleges that the said city of Jacksonville is not authorized and has not been empowered under the laws of the State of Florida to execute, issue, and sell the bonds aforesaid and thereby make the payment thereof, principal and interest, a charge upon the assessible property within the limits of the said city.

Your orator alleges that the said city pretends to have authority to issue and sell the said bonds hereinbefore described under an alleged election of the alleged qualified electors of the said city on the — day of October, 1893.

Your orator alleges that the said defendant city claims to
3 have held said election under and by virtue of an act of the legislature entitled "An act to authorize the municipality of Jacksonville to issue bonds and provide for the payment thereof," approved May 30th, 1893, and known as chapter 4239 of the Laws of the State of Florida.

And your orator alleges that the said city council did authorize the issuance of the said bonds by an ordinance of the said council, and subsequently pretended to submit the approval of the issuance of said bonds to the qualified electors of the said city at an election held as hereinbefore stated.

5th. Your orator alleges that the said election held as aforesaid, under which the defendant city claims that a majority of the votes cast by the qualified electors of said city approved the issuance of the said bonds, was illegal and void for the reasons hereinafter stated.

6th. Your orator alleges that at the said so-called election for approving the issuance of said bonds no person was permitted to vote except those who were qualified to vote at the general election held in Oct., 1892; that no person was permitted to vote at the said election held in October, 1893, as aforesaid except those who had become qualified to vote at the said city election held on July 18th, 1893, under an act of the legislature of the State of Florida entitled "An act to fix the number and provide for the election of municipal officers of the city of Jacksonville, a municipal corporation existing in Duval county, Florida, and to prescribe
4 their terms of office and regulate their compensation," approved May 16th, 1893, and at the said alleged election held in October, 1893, aforesaid no person was permitted to vote unless he had been registered as a voter or elector in accordance with the provisions of the said act approved May 16th, 1893.

7th. That between the dates of July 18th, 1893, and the date of the pretended election in October of that year the said city had provided no means for the registration of electors during that period, and under the laws of the State of Florida and under the ordinances of the said city no person otherwise qualified to vote could register and become qualified and authorized to vote at the said election held in October in the year aforesaid.

And your orator further alleges that under the terms and provisions of the said act approved May 16th, 1893, no person could become qualified to vote at the said city election held July 18th, 1893, except those who had the requisite qualifications for electors, to wit, the requisite age and requisite length of residence in said city prior to the general election held in October, 1892.

And your orator here refers to sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the said act of May 16th, 1893, and hereby makes the said sections part of this your orator's bill of complaint the same as if the said sections were herein fully set forth, and prays reference thereto as often as may be necessary.

5 And your orator alleges that a very large number of persons who had become of age and had acquired the requisite residence as an elector in the city of Jacksonville subsequent to the close of the registration books for the general election held in October, 1892, were deprived of the right to vote and were prohibited by the terms of the laws of the State of Florida from voting at the said alleged election for the issuance of bonds held in October, 1893.

Your orator avers that the aforesaid sections of the act of May 30th, 1893, were enforced against all persons coming within their provisions in respect to their rights and privileges to register and pay their poll taxes to qualify them to vote at the said city election held on the 18th of July aforesaid, and thereby were discriminated against and were compelled and required, in order to qualify themselves to vote at the said July election, to pay more poll taxes than they would have been required to pay if they had registered as electors before the close of the registration books at the registration held for the general election in the State of Florida in October, 1892; that at the registration of voters under the act of May 16th, 1893, aforesaid no person was permitted to pay his poll tax unless he paid it in person and was not permitted to pay his poll tax by an agent; that a great many persons were deprived of the right to qualify them to vote at the said July election in 1893 by reason of the short period of time allowed to register under said act after the same was passed and after it was known that the election was
6 to be held as provided in said act of May 16th, 1893.

8th. Your orator further avers that at and during the registration of voters for the general election held in October, 1892, of the State of Florida no person was permitted to pay his poll tax unless he paid it in person, and that the tax-collector of Duval county, State of Florida, at and during the registration last aforesaid illegally and wrongfully deprived several thousand persons from registering for the said election by illegally and wrongfully refusing to receive the poll taxes of said persons through an agent, and demanded and exacted that each person claiming to be an elector should pay his poll taxes in person to the collector or his subordinates in office, and that the said several thousand- of persons had all the other qualifications of electors at the time of and during the said registration for the general election held in October, 1892, at the time of the said city election held July 18th, 1893, except that they had not paid their poll taxes, and your orator avers that he is informed and believes, and upon information and belief alleges, that the said several thousand- of voters who were thus deprived of the right to become qualified to vote by paying their poll taxes as hereinbefore stated did not have an opportunity to register and pay their poll taxes under the provisions of the said act of May 16th, 1893, and thereby could not become qualified to vote at the said city election on the 18th of July, 1893.

9th. Your orator further alleges that the section six and other sections of the said act of May 16th, 1893, prescribing the
7 size and form of the ballot and the mode and manner of voting provided for therein and generally known as the Australian ballot system, *was* applied and enforced at the said alleged election for the approving of the issuance of bonds, held in October aforesaid. Your orator alleges that the enforcement of and the application of the said act of May 16th, 1893, and the provisions thereof in respect to the mode and manner of voting and the use of the official ballot at the said alleged election for the issuing of bonds, in October of that year, *was* illegal and wrong and

took a great many of the otherwise qualified electors by surprise, for the reason that they had had no sufficient notice that the provisions of the said sections under said law would be applied and enforced at the said October election, and who consequently were not prepared to comply with and vote according to the said several provisions of said act.

10th. Your orator avers that the population of the city of Jacksonville exceeds twenty thousand people, and your orator is informed and believes, and on information and belief alleges, that at and before the time of the said October election in 1893 there were residing within the limits of the said city of Jacksonville about four thousand male persons who at that time possessed all the constitutional qualifications of electors of the said city, except that they had not registered and paid their poll taxes, and who would have registered and paid their poll taxes had reasonable facilities been afforded them to do so and would have voted at said October
8 election if they had had opportunity to pay their poll taxes and register as an elector. Your orator further avers that at said election for the approval of the issuance of the said bonds, held in October, 1893, as hereinbefore stated, only about nine hundred and five votes were cast, of which two hundred and four were against the issuance of said bonds and four hundred and ninety-seven in favor of issuing the said bonds; and your orator avers that the question of the issuance of the said bonds was never submitted for approval or disapproval to the qualified electors of the said city, to wit, to the persons who had the constitutional qualifications of electors under the constitution and laws of the State of Florida, but that by the wrongful acts of the tax-collector of Duval county hereinbefore stated and by the discrimination against the electors contained in the said act of May 16th, 1893, and the act of May 30th, 1893, and by reason of the want of means and facilities for registration and the payment of poll taxes hereinbefore stated, a great majority of the male persons within the limits of the said city of Jacksonville having all the constitutional qualifications of voters under the constitution and laws of the State of Florida were deprived of the right of voting at said election for the approval of the issuance of said bonds held in October, 1893.

All of which actings and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

Your orator further avers that he waives an answer under
9 oath on the part of *this* defendants herein.

And may it please the court to enjoin and restrain the defendant The City of Jacksonville, its mayor, secretary, and treasurer, and the members of the city council of the said city from issuing, selling and delivering, pledging, or otherwise disposing of any of the said bonds mentioned and described in your orator's bill of complaint.

And may it please the court to enjoin and restrain them and each of them by temporary writ of injunction, as hereinbefore prayed, until the further order of this honorable court.

And may it please the court to grant such other, further, and different relief as to this honorable court may seem just and equitable.

And may it please the court to grant unto your orator the most gracious writ of subpœna of the United States of America, directed to the City of Jacksonville aforesaid and to D. U. Fletcher, the mayor thereof, commanding them, upon a day certain and under a certain penalty therein to be specified, to be and appear before this honorable court to answer the premises and to stand to and abide such further order and direction as to this honorable court may seem just and equitable.

And your orator will ever pray, etc.

BISBEE & RINEHART,
Solicitors for Complainant.

Endorsed: In circuit court United States. John H. Colvin *vs.* The City of Jacksonville *et al.* Filed this 3rd day of May, 1894. Philip Walter, clerk. Bisbee & Rinehart, for complainant.

10 Circuit Court United States, Northern District of Florida.

JOHN H. COLVIN, Complainant,
vs.
CITY OF JACKSONVILLE & D. U. FLETCHER, Defendants.

Personally appeared before me John H. Colvin, who, being first sworn, deposes and says that the allegations of fact contained in the bill of complaint in the above-entitled cause are true to the best of his knowledge, information, and belief.

JOHN H. COLVIN.

Sworn to and subscribed to before me this the 8th day of May, A. D. 1894.

PHILIP WALTER, *Clerk.*

Endorsement: Circuit court United States, northern district of Florida. John H. Colvin, complainant, *vs.* City of Jacksonville & D. U. Fletcher, defendants. Affidavit of John H. Colvin. Filed May 8, 1894. Philip Walter, clerk.

11 To the honorable judges of the circuit court of United States for the northern district of Florida, in equity:

John H. Co-vin, who is a citizen of the State of Illinois, of the city of Chicago, county of Cook, in said State, exhibits this his amended bill of complaint against the city of Jacksonville, a municipal corporation organized and existing under the laws of the State of Florida, and against D. U. Fletcher, a citizen of the State of Florida and claiming to be the mayor of the said city, and against —— ——.

And thereupon your orator complains and alleges—

1st. That he is the owner of property, real and personal, situate,

lying, and being within the corporate limits of the city of Jacksonville, a municipal corporation organized and existing under the laws of the State of Florida, and that the said property is subject to taxation by the said city and the authorized officers thereof, and your orator is a non-resident tax-payer in said city.

2nd. That the city council of the said city, consisting of sixteen members, have recently, by an ordinance of the said council, authorized and provided for the issuing by the said city of bonds of the said city to the amount of one million dollars ($1,000,000.00), to bear interest at the rate of five per — (5 %) per annum and payable not less than twenty nor more than forty years after date, said interest payable semi-annually, and that your orator's said property within the city limits of the said city of Jacksonville, to the amount in value of about $50,000, is subject to assessment for taxes to raise revenue with which to pay the interest on the said bonds and to provide a sinking fund for the payment of the principal of
12 said bonds, and that if the said bonds are issued your orator's said property will be assessed and taxed as aforesaid, and that the total assessed valuation of the property, real and personal, within the limits of the said city was for the year 1893 $13,011,290, of which the real estate was $10,654,950 and the personal was $2,356,340.

3rd. Your orator further alleges that the said city of Jacksonville is endeavoring to negotiate the sale of the said bonds of the said city, of the par value of $1,000,000.00, and has advertised for bids for said bonds, and that the said city of Jacksonville, through its officers, is now engaged in a- effort to negotiate the sale of the said bonds.

4th. Your orator charges and alleges that the said city of Jacksonville is not authorized and has not been empowered under the laws of the State of Florida to execute, issue, and sell the bonds aforesaid and thereby make the payment thereof, principal and interest, a charge upon the assessible property within the limits of the said city.

Your orator alleges that the said city pretends to have authority to issue and sell the said bonds hereinbefore described under an alleged election of the alleged qualified electors of the said city on the 17th day of October, 1893.

Your orator alleges that the said defendant city claims said election was held under and by virtue of an act of the legislature entitled "An act to authorize the municipality of Jacksonville to issue bonds and provide for the payment thereof," approved May 30th, 1893, and known as chapter 4239 of the Laws of the State of Florida.

13 And your orator alleges that the said city council did authorize the issuance of the said bonds by an ordinance of the said council, and subsequently pretended to submit the approval of the issuance of said bonds to the qualified electors of the said city at an election held as hereinbefore stated.

5th. Your orator alleges that the said election held as aforesaid, under which the defendant city claims that a majority of the votes

cast by the qualified electors of said city approved the issuance of the said bonds, was illegal and void for the reasons hereinafter stated.

5½. Your orator further avers that the ordinance aforesaid authorizing the issue of the said bonds was approved September 30th, 1893, a true copy of which is hereto attached, marked Exhibit "A," to which your orator prays reference as often as may be necessary.

Your orator is informed and believes, and on information and belief alleges, that subsequent to the date of the said election other ordinances were passed by the said city council, of which your — has not a copy, and that by one or more of the said ordinances some of the terms and conditions upon which said bonds were authorized to be issued and upon which the qualified electors of said city had the right to vote were changed and modified, and that by one or more of the said last-mentioned ordinances the said city provided and authorized the interest and principal of the said bonds to be made payable in gold coin; and your orator is informed and believes, and on information and belief alleges, that the bonds subsequently prepared for sale and delivery and the coupons thereof are made payable in gold coin; that afterwards and prior to the
14 said election the said city council prepared and adopted certain rules by which the voter or elector was bound and with which he was obliged to comply in order to vote at the said October election in 1893; which said rules and regulations were applied and enforced at the said election against all electors and voters, copy of which said rules and regulations we hereto attach, marked "B," to which reference is prayed as often as may be necessary.

6th. Your orator alleges that at the said so-called election for approving the issuance of said bonds no person was permitted to vote except those who were qualified to vote at the last general State election held in October, 1892; that no person was permitted to vote at the said election held in October, 1893, as aforesaid except those who had become qualified to vote at the said city election held on July 18th, 1893, under an act of the legislature of the State of Florida entitled "An act to fix the number and provide for the election of municipal officers of the city of Jacksonville, a municipal corporation existing in Duval county, Florida, and to prescribe their terms of office and regulate their compensation," approved May 16th, 1893, and at the said alleged election held in October, 1893, aforesaid no person was permitted to vote unless he had been registered as a voter or elector in accordance with the provisions of the said act approved May 16th, 1893.

7th. That between the dates of July 18th, 1893, and the date of the pretended election in October of that year the said city had provided no means for the registration of electors during that period, and that during that period, under the laws of the State of
15 Florida and under the ordinances of the said city, no person otherwise qualified to vote could register and become qualified and authorized to vote at the said election held on the 17th day October in the year aforesaid.

Your orator further avers that under the laws of the State of

Florida and the ordinances of the said city council no provisions were made and none existed for the registration of electors who possessed the constitutional qualifications of electors between the second Saturday in August, 1892, and the third day of July, 1893, and the only provision for such registration from the third day of July, 1893, was under and in accordance with section five of the said act of May 16th, 1893, and other sections thereof, and that consequently all male persons citizens of Jacksonville who had not registered on the said second Saturday in August, 1892, and all male persons who subsequent to that date were residents of the said city of Jacksonville and had arrived at the age of twenty-one years or who had acquired the requisite length of residence to become qualified voters were deprived of the privilege of registration except as provided in said act of May 16th, 1893.

And your orator further alleges that under the terms and provisions of the said act approved May 16th, 1893, no person could become qualified to vote at the said city election held July 18th, 1893, except those who had the requisite qualifications for electors, to wit, the requisite age and requisite length of residence in said city prior to the general State election held in October, 1892.

And your orator here refers to sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the said act of May 16th, 1893, and hereby makes the said sections part of this your orator's bill of com-
16 plaint the same as if the said sections were herein fully set forth, and prays reference thereto as often as may be necessary.

And your orator alleges that a very large number of persons who had become of age and had acquired the requisite residence as an elector in the city of Jacksonville subsequent to the close of the registration books for the general State election held in October, 1892, were deprived of the right to vote and were prohibited by the terms of the laws of the State of Florida from voting at the said alleged election for the issuance of bonds, held in October, 1893.

And your orator further alleges that by reason of the shortness of the time for registration provided under the said act of May 16th, and by reason *for* the want of knowledge and notice on the part of electors generally that such act had been passed many male citizens residents of the said city of Jacksonville who, on the second Saturday in August, 1892, possessed all the constitutional qualifications of an elector were deprived of the privilege of registering and otherwise qualifying themselves to vote at the said city election on the 18th day of July, 1893.

Your orator avers that the aforesaid sections of the act of May 16th, 1893, were enforced against all persons coming within their provisions in respect to their rights and privileges to register and pay their poll taxes to qualify them to vote at the said city election held on the 18th of July aforesaid, and thereby many electors were discriminated against and were compelled and required, in order to qualify themselves to vote at the said July election, to pay more poll taxes than they would have been required to pay if they
17 had registered as electors before the close of the registration

books at the registration held for the general election in the State of Florida in October, 1892; that at the registration of voters under the act of May 16th, 1893, aforesaid no person was permitted to pay his poll tax unless he paid it in person and was not permitted to pay his poll tax by an agent, and thereby many electors were deprived of the right to vote; that a great many persons were deprived of the right to qualify them to vote at the said July election in 1893 by reason of the short period of time allowed to register under said act after the same was passed and after it was known that the election was to be held as provided in said act of May 16, 1893.

8th. Your orator further avers that at and during the registration of voters for the general election held in October, 1892, of the State of Florida no elector was permitted to pay his poll tax unless he paid it in person, and that the tax-collector of Duval county, State of Florida, at and during the registration last aforesaid illegally and wrongfully deprived several thousand electors from registering for the said election by illegally and wrongfully refusing to receive the poll taxes of said electors through an agent, and demanded and exacted that each elector or person claiming to be an elector should pay his poll taxes in person to the collector or his subordinates in office; that of the said several thousand about three thousand were residents of the said city, and that after and by such refusal as aforesaid of the said tax-collector many electors were taken by surprise and had not time to go in person to the said collector's office and pay their poll tax, and that the said three thousand- of per-
18 sons had all the other qualifications of electors at the time of and during the said registration for the general election held in October, 1892, at the time of the said city election held July 18th, 1893, except that they had not paid their poll taxes; and your orator avers that he is informed and believes, and upon information and belief alleges, that the said three thousand- of voters who were thus deprived of the right to become qualified to vote by paying their poll taxes, as hereinbefore stated, did not have an opportunity to register and pay their poll taxes under the provisions of the said act of May 16th, 1893, and thereby could not become qualified to vote at the said city election on the 18th day of July, 1893.

9th. Your orator further alleges that the section six and other sections of the said act of May 16th, 1893, prescribed the size and form of the ballot and the mode and manner of voting provided for therein and generally known as the Australian ballot system, and the said ordinances relating thereto *was* applied and enforced at the said alleged election for the purpose of approving of the issuance of bonds held in October aforesaid. Your orator alleges that the enforcement of and the application of the said act of May 16th, 1898, and the provisions thereof in respect to the mode and manner of voting and the use of the official ballot at the said alleged election for the issuing of bonds in October of that year *was* illegal and wrong and took a great many of the otherwise qualified electors by surprise for the reason that they had no sufficient notice that the provisions of the said sections under said law would be applied and en-

forced at the said October election, and who consequently were
19 not prepared to comply with and vote according to the said
several provisions of said act.

Your orator is informed and believes, and upon information and belief alleges, that at the alleged election on October 17th aforesaid many qualified electors were denied the right to vote by the enforcement of that provision of section six of said act of May 16th which excluded all persons from voting whose name *was* not on the list of electors prepared by the commissioners of election as required by said act, and the officers of the election at the said October election enforced the provisions aforesaid of the said act and excluded all electors from voting whose name *was* not on the list or the copy of the list in the hands of the officers of election on the date of the election.

10th. Your orator avers that the population of the city of Jacksonville exceeds twenty thousand people; and your orator is informed and believes, and on information and belief alleges, that at and before the time of the said October election in 1893 there were residing within the limits of the said city of Jacksonville about four thousand male persons who at that time possessed all the constitutional qualifications of electors of the said city, except that they had not registered and paid their poll taxes and who would have registered and paid their poll taxes had reasonable facilities been afforded them to do so, and many of them would have voted at said October election if they had had opportunity to pay their
poll taxes and register as an elector against the issuing of
20 your bonds. Your orator further avers that at said election for the approval of the issuance of the said bonds held in October, 1893, as hereinbefore stated, only about nine hundred and five votes were cast, of which two hundred and four were against the issuance of said bonds and four hundred and ninety-seven in favor of issuing the said bonds; and your orator avers that the question of the issuance of the said bonds was never submitted for approval or disapproval to the qualified electors of the said city, to wit, to the persons who had the constitutional qualifications of electors under the constitution and laws of the State of Florida, but that by the wrongful and illegal acts of the tax-collector of Duval county hereinbefore stated and by the discrimination against electors contained in the said act of May 16th, 1893, and the act of May 30th, 1893, and by reason of the want of means and facilities for registration and the payment of poll taxes hereinbefore stated, a great majority of the male persons within the limits of the said city of Jacksonville having all the qualifications of electors under the constitution and laws of the State of Florida were deprived of the right of voting at said election for the approval of the issuance of the said bonds held in October, 1893.

All of which actings and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

Your orator avers that he waives an answer under oath on the part of the defendants herein.

And may it please the court to enjoin and restrain the defendant The City of Jacksonville, its mayor, secretary, and treasurer,
21 and the members of the city council of the said city from issuing, selling and delivering, pledging, or otherwise disposing of any of the said bonds mentioned and described in your orator's bill of complaint.

And may it please the court to enjoin and restrain them and each of them by temporary writ of injunction, as hereinbefore prayed, until the further order of this honorable court.

And may it please the court to grant such other, further, and different relief as to this honorable court may seem just and equitable.

And may it please the court to grant unto your orator the most gracious writ of subpœna of the United States of America, directed to the City of Jacksonville aforesaid and to D. U. Fletcher, the mayor thereof, commanding them, upon a day certain and under a certain penalty therein to be specified, to be and appear before this honorable court to answer the premises and to stand to and abide such further order and direction as to this honorable court may seem just and equitable.

And your orator will ever pray, etc.

BISBEE & RINEHART,
Solicitors for Plaintiff.

Endorsement: In circuit court United States, northern district of Florida. John H. Colvin *vs.* The City of Jacksonville *et al.* Amended bill of complaint. Filed May 21st, 1894. Philip Walter, clerk, by Jno. S. Driggs, dep. clerk. Bisbee & Rinehart, solicitors for defendant-.

22 In Circuit Court of the United States, Northern District of Florida.

JOHN H. COLVIN, Complainant,
vs.
THE CITY OF JACKSONVILLE & D. U. FLETCHER.

The defendants severally, by their solicitors, A. W. Cockrell & Son, Young & Barrs, and Cooper & Cooper, move the court to dismiss the complainant's amended bill of complaint herein upon the following several grounds:

1st. The cause made by the amendments of the amended bill is not a case within the jurisdiction of the court.

2. The amendments of the bill as amended show that the case thereby sought to be made is without the jurisdiction of this court.

3. There is no equity in the case made by the amended bill.

A. W. COCKRELL & SON.
COOPER & COOPER.
YOUNG & BARRS.

May 22nd, 1893.

And now, to wit, May 24th, 1894, after hearing by co-nsel for respective parties and the court being fully advised therein, it is now ordered, adjudged, and decreed that the within motion is hereby overruled.

CHARLES SWAYNE, *Judge*.

Endorsement: In circuit court of United States, northern district of Florida. John H. Colvin, complainant, *vs.* The City of Jacksonville & D. U. Fletcher. Motion of defendants severally to dismiss said amended bill. Filed May 22nd, 1894. Philip Walter, clerk.

23 In the Circuit Court of the United States, 5th Circuit, Northern District of Florida. In Chancery.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

The joint and several answers of The City of Jacksonville, a municipal corporation organized and existing in Duval county, Florida, under the laws of the State of Florida, and D. U. Fletcher, the mayor of said city, defendants in the above-entitled cause, to the amended bill of complaint of John H. Colvin, complainant.

These defendants respectively, now and at all times hereafter saving and reserving to themselves all and all manner of benefits or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering, say:

They are informed and believe, and upon such information and belief allege the fact to be, that the complainant is not a citizen of the State of Illinois, of the city of Chicago, county of Cook, as set up in said bill. On the contrary, they aver as of their own knowledge the fact to be that the domicil, abode, and actual resi-
24 dence of the complainant is now and has been for three years and more at and before the filing of the bill in this cause in the county of Duval, Florida, south of the St. John's river, outside and beyond the city limits of the city of Jacksonville, in said county, situate about one mile from the limits of said city.

These defendants, further answering said bill, say that they have made diligent inquiry and have caused thorough investigation to be made by the comptroller of the city of Jacksonville, who is *ex officio* tax-assessor of said city, and by the Florida Abstract and Title Security Company, a corporation organized for the purpose and engaged in the business of furnishing information as to matters appearing upon the public records of Duval county, and by the clerk of the circuit court for Duval county to ascertain what property, real and personal, is owned by the complainant, John H. Colvin, and subject to taxation by the city of Jacksonville or the author-

ized officers thereof, and thereupon these defendants say that the only real property owned by said complainant within said city or subject to taxation by said city is an undivided one-half interest in water lot 11 according to Hart's map of the city of Jacksonville; that said water lot 11 appears from the public record of Duval county to have been conveyed by John E. Hart, the then owner thereof, to Walter F. Coachman on the 25th day of May, 1893, subject to the liens of mortgages, aggregating $17,000, and of taxes due the city for the years 1891 and 1892 and taxes due the State and county for the year 1892, in consideration of the sum of $5,000, and that the second day thereafter and before the recording of said deed, in consideration of the payment of the sum of $5,000 by said Colvin, the said Coachman conveyed to said Colvin one-half of the said interest of said Coachman in and to said water lot 11; that said Coachman and Colvin now own said water lot 11 subject to the liens of said mortgages, each owning an undivided half interest; that in and by the said last-mentioned deed the said complainant is described as being of the county of Duval and State of Florida; that said water lot 11 is assessed upon the assessment-rolls of the city of Jacksonville at a valuation of $24,000 and at about its full cash value; that said Colvin has never owned any other real estate within said city or subject to taxation by said city; that said complainant has never been a resident tax-payer of the city of Jacksonville and has never made return to the tax-assessor of the city of Jacksonville of any personal property assessable for taxes, as required by law of all persons owning personal property subject to taxation by the city of Jacksonville; that no taxes have ever been assessed by the city of Jacksonville against said complainant, with the single exception that for the year 1893 there was assessed against him the sum of $17.94, taxes upon a pleasure yacht assessed at a valuation of $1,300 and owned by him, which yacht plies upon the St. John's river and ties up sometimes within and sometimes without the limits of the city of Jacksonville; that other than said pleasure yacht said complainant owns no personal property subject to taxation by the city of Jacksonville; that said Colvin has never paid said sum of $17.94 of taxes so assessed, although the taxes for the year 1893 have been long since due and payable; that these defendants do not know whether or not said pleasure yacht is subject to taxation by the city of Jacksonville, & that said complainant has never paid to the city of Jacksonville one cent of taxes assessed against him.

These defendants, further answering said bill, say that it is true, as alleged in the amendment to said bill, filed May 23rd, 1894, that the property, real and personal, according to the total assessed valuation thereof, within the limits of the city of Jacksonville was for the year 1893 $13,011,290.00, of which the real property was assessed at $10,654,950 and the personal property at $2,356,340; but these defendants upon information and belief say that the actual cash value of all the property, real and personal, within the city subject to taxation by the city is more than $20,000,000; that the city has been for many years

past and is now surely, steadily, and rapidly increasing in respect of the value of the taxable property within its limits and in respect of population, and that such growth in values will continue, but that on account of the location and character of said complainant's taxable property the value thereof has not in several years increased in value at all and will not in future increase in value for the reason that the decay and decrease in value of the buildings and improvements on said water lot 11 will fully equal any probable increase in value of his taxable property in other respects.

These defendants, further answering said bill, say that in the year 1878 the then city of Jacksonville issued bonds, bearing interest at the rate of eight per cent. per annum, two hundred thousand dollars of which are now outstanding, a burthen and a lien upon the said water lot 11 and all other taxable property situate within the limits of the former city of Jacksonville as said limits existed prior to May, 1887; that the city many years ago completely outgrew the water works and sewerage systems of the city, and it has during such period of years been practically unanimously agreed by the residents and tax-payers of the city that it was necessary a new and larger issue of bonds should be issued to enable the city to make absolutely necessary improvements and extensions of the water and drainage systems of the city and to make other improvements necessary to the health, comfort, and happiness of the people of the city; that there are now within the city limits more than 6,000 houses, less than 1,400 of which are now supplied with water and sewer connections necessary to the proper protection of the health of the inhabitants; that it will require the expenditure of at least $400,000 to properly extend and perfect the water and the sewerage and drainage systems of the city; that it will require the expenditure of at least $175,000 to make needed improvements in the way of opening and extending streets and parks, including paving; that it will require the expenditure of about $100,000 for the purchase of a location or locations and erection of city buildings, which are very much needed by the city of Jacksonville, the city now being without a public market place, and protection of the public health requiring the erection and control by the city of a suitable market place; that it will require the expenditure of about $75,000 for the purchase and erection of an electric light plant for the purpose of properly lighting the said city; that it will require the expenditure of about $25,000 for the purpose of bulkheading street fronts in order to properly protect the health of said city, and that it will require the expenditure of about 25,000 to properly enlarge the plant and improve the efficiency of the fire department of the city; that, in answer to a very general demand from the tax-payers and residents of the city of Jacksonville, the legislature of the State of Florida, in the month of May of the year 1893, enacted an act entitled "An act to authorize the municipality of Jacksonville to issue bonds and provide for the payment thereof," and the governor of the State approved said act on the 30th day of May, 1893, which act is known as chapter

4239 of the Laws of Florida; that afterwards, to wit, on the 18th day of July, 1893, a general city election was held in strict compliance with all of the provisions regulating the preparation for and the holding of said election contained in an act of the legislature of the State of Florida entitled "An act to fix the number and provide for the election of the municipal officers of the city of Jacksonville, a municipal corporation existing in Duval county, Florida, and to prescribe their terms of office and regulate their compensation," approved May 16th, 1893, known as chapter 4301 of the Laws of Florida; that said city election was fairly and honestly conducted in all respects; that at said city election city officers were elected by large majorities pledged to the issuance of bonds to take up the outstanding $200,000 of 8 per cent. bonds and to make all improvements necessary to put the city of Jacksonville into good sanitary condition and to place the city abreast of the times so as to compare favorably with other prosperous and enterprising cities of its class; that
29 said city officers promptly began to carefully consider and decide upon the work necessary to be done to put the city into good sanitary condition and abreast of the times and to estimate the necessary cost thereof; that said city officers determined that it was necessary and advisable to issue bonds to an amount not exceeding $1,000,000 for the several purposes herein elsewhere set forth; that the city council determined to submit to the electors of the city qualified to vote thereon the question of the issuance of said bonds in such a way that each elector could express by his vote his approval or disapproval of the issuance of bonds to the amounts and for each of the purposes proposed, and to that end passed an ordinance entitled "An ordinance to provide for the issuance of bonds and the payment thereof," which was approved by the mayor and was duly published on the 3rd day of October, A. D. 1893, a copy of which is hereto attached as part of this answer, marked Exhibit "A;" that an election was held on the 17th day of October, 1893, in full and strict compliance with the provisions of said ordinance and the laws of the State applicable thereto; that at said election the issuance of the said bonds was approved by a majority of the votes cast by the qualified electors of said city who were qualified to vote at the city general election held next preceding such election; that the aforesaid city election held on the 18th day of July, 1893, was the city general election held next preceding said election held October 17th, 1893; that subsequent to said election held on 17th day of October, 1893, an ordinance was duly passed by the city council and approved by the mayor and published entitled "An ordinance to carry into effect the provisions of an
30 ordinance entitled 'An ordinance to provide for the issue of bonds and the payment thereof,' published October 3rd, 1893," a copy of which is hereto attached as part of this answer, marked Exhibit "B;" that thereafter an ordinance was duly passed by the city council and approved by the mayor and published entitled "An ordinance to authorize the trustees for the water-works and improvement bonds of the city of Jacksonville to sell and providing for the delivery of the water-works and improvement bonds

of the city of Jacksonville," a copy of which is hereto attached as part of this answer, marked Exhibit "C;" that thereafter an ordinance was duly passed by the city council and approved by the mayor and published entitled "An ordinance to amend sections 1, 3, 4, 5, 8, and 11 of an ordinance entitled 'An ordinance to carry into effect the provisions of an ordinance entitled "An ordinance to provide for the issue of bonds and the payment thereof," published October 3rd, 1893,' approved July 19th, 1894," a copy of which is hereto attached as part of this answer, marked Exhibit "D;" that thereafter an ordinance was duly passed by the city council and approved by the mayor and published entitled "An ordinance to authorize the trustees for the water-works and improvement bonds of the city of Jacksonville to sell and providing for the delivery of the water-works and improvement bonds of the city of Jacksonville," a copy of which is hereto attached as part of this answer, marked Exhibit "E."

These defendants, further answering, say that under and by virtue of said laws and ordinances the city of Jacksonville, through its proper officers, were at the time of filing of complainant's said bill attempting to issue and sell said issue of $1,000,000 of 5 %
31 bonds, or so much thereof as may be necessary for the said several purposes as provided in and by said several ordinances, and that unless restrained by this honorable court they will continue their efforts to carry out the provisions of said several laws and ordinances, to the end that the purposes thereof may be effected.

These defendants, further answering, say that the said property of said complainant, said water lot 11, lies within the limits of the former city of Jacksonville as said limits existed prior to May, 1887, and within the limits of the city of Jacksonville taxable for water and fire protection, by reason of which fact said property is required by law to pay taxes at a rate higher and greater than is property lying outside said limits, in this, that the present outstanding issue of $200,000 of 8 % bonds known as sanitary improvement bonds are a lien upon only such property as lies within the said former limits of the city of Jacksonville, and the entire burthen of paying the interest and creating a sinking fund for said $200,000 of bonds is upon the said property within said former limits, and the entire cost of improving and maintaining the fire department of the city is now required to be paid out of the water-works and fire protection fund, which is sustained by taxation upon only so much of the property within the city limits as is protected from fire by the present water-works system, whereas upon the sale of the proposed issue of bonds out of the proceeds thereof there would be paid the present outstanding $200,000 of bonds; $225,000 would be expended in perfecting and extending the water-works system; $25,000, which will otherwise have to be raised directly by taxation upon the
32 limited area of property, will be expended upon the fire department, and the entire issue of bonds will become a lien and a burthen upon all the taxable property within the city without distinction as to location. The $200,000 of 8 % bonds are now a burthen upon only $7,992,990.00 of property, according to the

city's assessment valuation, and would be transformed into a $200,000 5 % bond burthen upon all the property within the city, greatly to the relief of complainant's said taxable property; the present burthen of $25,000 necessary for perfecting the fire apparatus and an annual tax levy of about $— levied for the maintainance of the fire department upon taxable property assessed at $9,638,400.00 would be transformed into $25,000 of 5 % bonds, and an annual tax levy very slightly, if at all, increased upon practically, if not quite, the entire property within the city, greatly to the relief of complainant's property, and complainant's property would share fully in the relief from the burthens of taxation attributable to the great and certain savings and profits to the revenues of the city and manifest advantages in the way of sanitation, health, comfort, and pleasure to be derived from the water works extended and perfected, the erection of a city public building, the opening and paving of streets, the making of parks, and the other results for which the issuance of bonds have been authorized.

These defendants, further answering said bill, say that the issuance of said bonds will increase the bonded indebtedness of the city of Jacksonville not exceeding $800,000, and that all of the bonded indebtedness of the city will then bear interest at the rate of five per cent. per annum; that the payment of the 8 % interest on
33 the $200,000 of bonds now outstanding require- the levying of taxes annually to the amount of $16,000; that the total amount necessary to pay 5% interest annually upon the whole issue of $1,000,000, if the whole amount be found necessary and sold, will be $50,000, or only $34,000 more than is now necessary to pay the interest upon the outstanding $200,000 bonds; that the city now has practically no source of revenue other than taxation in the form of licenses and direct taxation upon property; upon information and belief that with the proceeds of said bonds, if now sold, the city will procure revenue from other new and additional sources of revenue, not otherwise practicable to obtain, more than sufficient to meet the apparent additional charge or burthen of interest upon said bonds and to provide a sinking fund to meet the principal of said bonds at maturity, so that the proposed issue of bonds will not increase to any extent whatever the burthen or charge of taxation upon complainant's taxable property within said city, but will, on the contrary, decrease the burthen of taxation otherwise necessarily to be imposed upon his said property; that to meet the said additional amount of interest $34,000 per annum and to provide a sinking fund to meet the principal of the additional amount of bonded indebtedness not exceeding $800,000 contemplated and provided for the city will have as new sources of revenue procured by the expenditure of the proceeds of said bonds—

1st. The increased revenue-producing capacity and the increased value of the water-works system, upon which is to be expended $225,000 or so much thereof as may be needed, and the thereby increased value of the water-works system will not be less than the necessary expenditure thereon; but, on the contrary, the value thereof will constantly increase.

2nd. The saving in rent now necessarily paid and the revenue-producing capacity and the value of the public buildings and grounds, upon which is to be expended $100,000 or so much thereof as may be needed.

3rd. The net results to the city and the value of the electric light plant, upon which is to be expended $75,000 or so much thereof as may be needed.

That from the increased revenue of the water works alone the city will be able to pay the entire amount of $34,000 additional interest account and lay aside something to the credit of the sinking fund to meet the principal of said bonds; that there are now only about 1,371 taps or connections with said water-works system, from which is received the gross sum of $18,000 annually; that the contemplated extension and perfection of said system would produce at least three times the present gross receipts at a very slightly increased cost of operation, which cost would not exceed $20,000 per annum; that until the extension and improvement of said system it will be practically necessary to expend the entire amount of the gross proceeds of said water-works system upon said system; that upon the completion of the proposed work of extension and improvement of the system from the proceeds of the bonds the net profits of said water-works system available for the purpose of interest and sinking fund for said bonds would exceed $34,000 per annum and would steadily increase from year to year.

That the purchase of a location or locations and the erection of city buildings, for which the proceeds of not exceeding $100,000 of said bonds are to be used, will save to the city more than $2,000 per annum now paid for rents and would produce a net annual revenue to the city for market and other rentals of at least $18,000 more, all of which could be applied to the interest and sinking-fund account of said bonds; that the authority and ability to purchase and erect an electric light plant at a cost not to exceed $75,000 will result in an annual saving and revenue to the city of at least $2,500.00, and that the value to the city of Jacksonville of the property acquired by it with the proceeds of said additional issue of $800,000 would never be less than $800,000.

And these defendants, further answering said bill, upon information and belief say to the allegations in the 1st paragraph of said bill it is true that the complainant owns some taxable property in the city of Jacksonville, but only as hereinbefore stated, and it is not true that complainant is a resident tax-payer in said city.

To an allegation in the 2nd paragraph of said bill these defendants upon information and belief say that the said complainant does not own property subject to taxation by the city of Jacksonville to any amount in value exceeding $12,500.

To the fourth paragraph of said bill these defendants say that the city of Jacksonville is authorized and has been empowered under the laws of the State of Florida and the ordinances hereinbefore stated to execute, issue, and sell the bonds aforesaid and thereby

make the payment thereof, principal and interest, a charge upon the assessable property within the limits of said city.

To the 5th paragraph of said bill these defendants say that the said election held on the 17th day of October, 1893, was not for any reason illegal or void, but that, on the contrary, said election was in all respects legal, valid, and sufficient for the purpose of authorizing the issue and sale of said bonds.

36 To an allegation in the paragraph of said bill marked 5½ these defendants say that no ordinances were passed by the city council other than those hereinbefore mentioned and attached to this answer as exhibits, and that no ordinance was passed by the city council subsequent to the date of said election by which the terms and conditions upon which said bonds were authorized to be issued and upon which the qualified electors of said city had the right to vote were changed or modified; that the said several ordinances, copies of all of which are attached as exhibits to this answer, speak for themselves upon that question; and these defendants say that said bonds were ordered prepared and, so far as completed, have been prepared in strict compliance with the provisions of said ordinances now in force. These defendants admit that rules and regulations, of which Exhibit "B" to the bill is a copy, were adopted, applied, and enforced at said election held October 17th, 1893.

These defendants say that — is not true, as alleged in the 6th paragraph of said bill, that at said election held October 17th, 1893, no person was permitted to vote except those who were qualified to vote at the last general State election held in October, 1892, but the truth is that all the qualified electors of said city who were qualified to vote at the city general election held next preceding such election were given ample opportunity to vote at said election, and that no persons other than said qualified electors were permitted to vote at said election.

These defendants, answering allegations in the 7th paragraph of said bill, say that all persons who were authorized by law to qualify and vote at said election of October 17th, 1893, were given

37 ample opportunity so to do, but that the constitution of the State of Florida does not prescribe the qualifications of voters for municipal elections nor for elections held for the approval of rejection of the issuance of bonds by municipalities, and that no one whosoever was deprived at said election of any right secured by law. If those whose age or residence became such after the State election in October, 1892, and before the bond election in October, 1893, as to entitle them to register and to vote at any State election in said city had voted at said bond election, the number was so small that it could not have changed the result of said bond election.

These defendants say that no person was discriminated against or required, in order to qualify himself to vote at said July election, to pay more poll taxes than he would have been required to pay if he had registered as an elector before the close of the registration books at the registration held for the general election in the State of Florida in October, 1892. At the registration of voters under the act of May 16th, 1893, aforesaid no person was prevented from paying his poll

tax, either in person or by agent, and no distinction was made between those who paid their poll taxes in person and those who paid through agents. No person was deprived of the right to qualify to vote at the said July election in 1893 by reason of the short period of time allowed to register under said act after the same was passed and after it was known that the election was to be held as provided in said act of May 16th, 1893, but, on the contrary, registration books were opened on the 19th day of June, 1893, in the city hall and were kept open at that place daily from 9 a. m. to 1 p. m. and from 2 p. m. to 5 p. m. from the 19th day of June, 1893, to and
38 including the 3rd day of July, 1893, which fact was published and generally known at the time, during which time all persons who were entitled to qualify themselves as electors at the last State election and failed to do so were given ample opportunity to qualify themselves, and that as matter of law and fact every person who desired to pay his poll tax to said tax-collector had abundant time and opportunity to do so, either in person or by agent, and as matter of fact there was not the remotest indication of any one being impeded or delayed in paying poll taxes because of the presence of other parties asking the attention or time of the tax-collector or otherwise, and as matter of fact only a very few persons, to wit, less than 50 in number, made any effort to pay poll taxes, and all who tried to pay poll taxes and tendered the money in that behalf, either in person or by agent, were permitted to pay and did pay the tax and were thereby, in so far as the poll-tax payment was concerned, duly qualified to vote.

At and during the registration of voters for the general election held in October, 1892, of the State of Florida any and all persons offering to pay their poll taxes, either in person or through their agents, were permitted to do so, and the statement in said bill of complaint that the tax-collector of Duval county, State of Florida, at and during the registration last aforesaid or at any other time, illegally or wrongfully or in any other way deprived several thousand persons or any one person from registering for the said election by refusing to receive the poll taxes of said persons or person through an agent, or demanded or exacted that each person claiming to be an elector should pay his poll taxes in person to the collector or his subordinates in office, is without foundation in fact,
39 and the truth is that the collector of taxes for Duval county, Florida, has, at any and at all times during office hours, accepted and receipted for all poll taxes tendered to him from the day that the poll taxes for the years 1890 and 1891 respectively became payable down to the present time, whether said poll taxes were tendered personally or by an agent, and the tax-collector of Duval county kept his office open to receive poll taxes from 9 a. m. to 1 p. m. and from 2 p. m. to 5 p. m. each day from June 1st, 1893, until the time for payment of poll taxes for the purpose of said election, July 18th, 1893, had passed, a period of more than one month, during which time all poll taxes tendered, whether by the tax debtor in person or by his agents, were received and receipted for, and in the preparation and revision of the lists of electors qualified

to vote at said election July 18th, 1893, no distinction was made between those who had paid their poll taxes in person and those who had paid through agents.

These defendants have not sufficient knowledge to affirm or deny that there are or were of the population of said city of Jacksonville four thousand male persons who had or have the right to qualify under the law for State elections; but they say upon information and belief that never in the history of said city did any such number ever attempt to qualify themselves to vote at any election, Federal, State, or municipal. They aver that the largest number of votes ever cast in said city in any election was 1,617, for which election the payment of poll tax was not a prerequisite. They aver that every facility and opportunity was, in law and in fact, given to those who cared to comply with the law prescribing the qualification to vote, and they aver that no person failed to so qualify except such an one as either had not the right under
40 the law or refused to take advantage of such right or failed to do so because of his own default, and that in fact of those who did not register and did not pay the poll tax, just as of those who did qualify, the large majority were and are in favor of the issuance of said bonds and would have voted therefor had they voted at all.

These defendants say that the provisions of the laws of the State and of the ordinances of the city regulating the matter of the holding of said election October 17th, 1893, were strictly complied with. The so-called Australian system of voting and the size and form of the ballot and the mode and manner of voting applied and enforced at said election of October 17th, 1893, were in strict compliance with the laws of the State of Florida, and the ordinance- of the city of Jacksonville regulating the same were strictly complied with, and the use of the official ballot and the form of the ballot and the mode and manner of voting applied and enforced at said election were all fully explained before the day of said election, October 17th, 1893, in the city newspapers and at various public meetings called for the discussion of said election, and it is not true that a great majority or any voters were thereby taken by surprise, and that the manner of voting was so simple and so fully explained that any person qualified to vote could have voted at said election.

These defendants say that before the time of the said October election in 1893 all persons who were by the laws of the State of Florida entitled to qualify as electors and vote at said election had been given ample opportunity to do so, and all persons who had qualified themselves as such electors were given an opportunity to vote at said election. No qualified elector was denied the
41 right to vote at said bond election by the enforcement of any law or ordinance or otherwise.

At said election held October 17th, 1893, less than one-half of those who were qualified to vote at said election took the trouble to go to the polls, it being generally known that only a majority of the votes actually cast was necessary to the issuance of bonds, and that an overwhelming majority of those who would take the trouble

to go to the polls would vote in favor of the issuance of the bonds, as an overwhelming majority of those entitled to vote and of the tax-payers and of the people of the city were in favor of authorizing the issue of the bonds. There were actually cast by the qualified voters authorized to vote at said election, October 17th, 1893, to wit, 701 votes in favor of authorizing the issuance of the bonds as proposed, and, to wit, 204 votes were cast against the proposition; and on information and belief these defendants say that the vote cast against the issuance of bonds represents, as opposed to the issuance of the bonds, a much larger proportion of the entire number of votes cast than would have appeared opposed to bonds had the entire number of persons qualified to vote at said election voted or had all the tax-payers or all the people of the city voted.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged; without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied is true to the knowledge or belief of these
42 defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THE CITY OF JACKSONVILLE.
DUNCAN U. FLETCHER, *Mayor.*

Attest:
[SEAL.] WM. C. WEST, *Recorder.*

COOPER & COOPER,
A. W. COCKRELL & SON,
YOUNG & BARRS,
Of Counsel & Solicitors for Defendants.

STATE OF FLORIDA, }
County of Duval. }

Before me this day personally came D. U. Fletcher, to me well known, who, being sworn in due form of law, deposes and says that he is one of the defendants in the above-entitled suit, and that said answer is true as to all matters and things alleged as of his own knowledge, and that as to all matters and things alleged upon information and belief he verily believes it to be true.

DUNCAN U. FLETCHER.

Sworn to and subscribed before me this 29th day of May, A. D. 1894.

JOHN S. MAXWELL,
[SEAL.] *Notary Public, State of Florida at Large.*

Endorsement: In circuit court of United States, 5th circuit, northern district of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Joint and several answer of city of Jacksonville and D. U. Fletcher. Filed May 29, 1894. Philip Walter, clerk. Cooper & Cooper, A. W. Cockrell & Son, Young & Barrs, sols. for def'ts.

43 In Circuit Court of the United States, Northern District of Florida.

JOHN H. COLVIN
vs.
THE CITY OF JACKSONVILLE *et al.* } Exceptions to Answer.

Comes now the complainant, by Bisbee & Rinehart, his solicitors, and excepts to the answer by the defendants as follows:

1st. Complainant excepts to so much of the said answer as is contained from the commencement of the 20th line, on page 3½ of the said bill, to the close of the eleventh line, on page eleven of the said bill, and for grounds of exception state that:

1st. The portion of the answer above designated and excepted to is wholly irrelevant and immaterial to the case made by the bill.

2nd. The said portion of the said answer is not responsive to the bill, and the new matter set up therein does not constitute any defense to the bill of complaint.

3rd. The said portion of the said answer sets forth the advisability and utility of issuing *of issuing* the bonds stated in the bill, which is not a proper subject for this court to pass upon.

4th. The said portion of the said answer also sets forth that the proceeds of the said bonds will be used for the uses and purposes of The City of Jacksonville, one of the defendants. This, if true, does not constitute any defense to the complainant's bill and is not brought in question by the bill of complaint.

5th. The said portion of the said answer encumbers the
44 record with much useless and superfluous matter, thus creating unnecessary *progress* of the case. Whereupon the complainant prays judgment, &c.

BISBEE & RINEHART,
For Complainant.

Endorsement: In circuit court United States, northern district of Florida. John H. Colvin *vs.* The City of Jacksonville *et al.* Exceptions to defendants' answer. Filed June 6th, 1894. Philip Walter, clerk. Bisbee & Rinehart, for complainant.

45 Circuit Court United States, Northern District of Florida.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.* }

Personally appeared before me, S. W. Burnham, clerk of the circuit court of United States for the northern district of Illinois, John H. Colvin, who, being by me first duly sworn, deposes and says—

That all the matters of fact set forth in the amended bill of complaint filed in the above-entitled cause are true to the best of his knowledge, information, and belief, except that it may be true as a matter of law that some of the deponent's property within the limits of the city of Jacksonville may not be legally taxable by the said city authorities, but that this deponent says that the taxes assessible and that will be assessed upon his property within the limits of the said city to pay the interest upon the bonds mentioned in the bill and to accumulate a sinking fund to pay the principal will amount to much more than $2,000.00 before the maturity of said bonds.

JOHN H. COLVIN.

Subscribed and sworn to before me this 28th day of May, 1894.

[SEAL.] S. W. BURNHAM, *Clerk.*

Endorsement: Circuit court United States, northern district of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Affidavit of complainant. —— ——, clerk. Filed June 13th, 1894. Philip Walter, clerk, by John S. Driggs, deputy clerk.

46 In the United States Circuit Court for the Southern District of Florida. In Chancery.

JOHN H. COLVIN
vs.
THE CITY OF JACKSONVILLE *et als.*

It is hereby agreed by and between the solicitors of record of the respective parties to the above-entitled cause that the complainant's exceptions to the defendants' answer in said cause shall be submitted upon brief to the Hon. John W. Locke, the judge of the said court, wherever he may be out of the said district, for his consideration and adjudication thereon.

And it is further agreed that any ruling or decision made by the said judge in the premises shall be of full force and of the same effect as if rendered within the limits of the said district.

BISBEE & RINEHART,
Solicitors for Complainant.
COOPER & COOPER,
Solicitors for Defendants.

August 11th, 1894.

Endorsement: In United States circuit court, fifth circuit, in and for southern district of Florida. Chancery. Jno. H. Colvin *vs.* City of Jacksonville. Filed this 11th day of Aug., A. D. 1894. E. O. Locke, clerk. Agreement of counsel. Bisbee & Rinehart, Cooper & Cooper.

47 Circuit Court of United States, Southern District of Florida.

JOHN H. COLVIN, Complainant,
vs.
CITY OF JACKSONVILLE *et al.*, Def'ts.

Now comes the complainant and moves the court for a writ of injunction and the appointment of a receiver as prayed for in the amended bill of complaint in this cause and in the amendments thereto filed by leave of court.

And the defendant will please take notice that this motion will be made at 10 o'clock a. m. on the 29th day of October, 1894, before the Hon. James W. Locke, judge of the said court, at chambers, in the city of Jacksonville, or at such other place as he may direct, or as soon thereafter as the motion can be heard, and this motion is made upon the grounds set forth in the amended bill of complaint and the amendments thereto filed by leave of court and written documents and affidavits in support of the averments in the bill and upon the answer of the said city and exhibits thereto.

Defendants will also take notice that the amendments to the said original bill attached to this motion will be filed at the time of the hearing of the motion if the leave of the said judge to file the same is given.

BISBEE & RINEHART,
For Complainant.

Messrs. Cooper & Cooper, A. W. Cockrell & Son, Young & Barrs, for def'ts.

Copy served Oct. 23rd, '94.

48 Endorsement: Circuit court United States, southern district of Florida. John H. Colvin, complainant, *vs.* City of Jacksonville *et al.*, defendants. Motion for injunction and appointment of a receiver. Filed Oct. 23, 1894. E. O. Locke, clerk. Bisbee & Rinehart, for complainant.

49 In Circuit Court United States, Southern District of Florida.
In Equity.

JOHN H. COLVIN
vs.
THE CITY OF JACKSONVILLE *et al.* } Bill in Equity.

Comes now complainant, by Bisbee & Rinehart, his solicitors, and moves the court or any judge thereof for leave to file amendments to his amended bill herewith presented on the following grounds:

1st. Because matters are stated in the proposed amendments which did not come to complainant's or his solicitor's knowledge before the said amended bill was filed and other matters in the said proposed amendments came into existence and are the acts and

doings of the defendants since the said amended bill was filed. Replication not filed under rule 29.

BISBEE & RINEHART,
For Complainant.

Personally appeared H. Bisbee and on oath says that the matters of fact stated in the foregoing motion are true.

H. BISBEE.

Subscribed and sworn to this 29th day of Oct., 1894.

[SEAL.] N. A. GREENING, *D. C.*

50 Endorsed: In circuit court United States, southern district of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Motion for leave to file amendments to bill. Filed Oct. 29, 1894. E. O. Locke, clerk.

51 Circuit Court of United States, Southern District of Florida.

JOHN H. COLVIN, Complainant,
vs.
CITY OF JACKSONVILLE and D. U. FLETCHER, as Mayor Thereof, Defts.

John H. Colvin, who is a citizen of the State of Illinois and of the city of Chicago, by leave of court first had and obtained, exhibits against the city of Jacksonville and D. U. Fletcher, as mayor thereof, the following amendments and supplemental matter to his amended bill of complaint heretofore filed in this cause.

1st amendment. Your orator alleges that the ordinance of the city of Jacksonville under which the said alleged election was held described the bonds to be issued and set forth that the principal and interest of the said bonds was payable in lawful money of the United States.

This amendment is to follow the word "stated" in the third line on the 4th page of the amended bill.

2nd amendment. To be inserted after the figures "1893" in the nineteenth line on page twelve of said amended bill:

And your orator further alleges that he is informed by the publication in the local newspapers published in the city of
52 Jacksonville of the proceedings of the council of the said city, and believes, and on such information and belief alleges, that the said city council on or about the 15th day of October, 1894, made an assessment and levy of taxes upon all the assessible property, real and personal, within the limits of the said city to pay the first installment of interest that will become due on the said bonds; and your orator alleges that the said city *are* about to proceed and will proceed to enforce the collection of the said taxes and apply the same to pay the interest upon the said bonds unless enjoined and prohibited by judicial action.

And your orator further alleges that he is informed and believes

in like manner and from the said local newspapers, and upon information and belief alleges, that the said city has authorized the alleged board of trustees mentioned and referred to in the answer of the defendant and in the ordinances filed herewith to sell the said bonds and enter into a contract to sell the same at 97½ cents on the dollar and to pay to the party who negotiates the said sale 2½% commissions on the sale of the said bonds, contrary to the provisions of the said ordinance under which the said alleged election for the approval of the said bonds was held.

And your orator further alleges that recently, to wit, on or about the 9th day of October, 1894, the said city, through its board of public works, entered into a contract with the General Electric Company, a corporation under the laws of the State of New York,
53 for furnishing the material, machinery, and apparatus for the erection of an electric plant with the capacity of lighting with electricity 125 double-carbon arc lamps, 2,000 candle power each, and 125 single-carbon arc lamps, 2,000 candle power each, and 4,000 16-candle-power incandescent lamps and 300 30-candle-power series incandescent lamps; and your orator alleges that the said 4,000 incandescent lamps mentioned and provided for in the said contract have been provided for by the said city for the express purpose of engaging in the business of furnishing electric lights to the inhabitants of the said city in their private residences and business-houses, and that the said city designs and intends to construct and to cause to be constructed the said electric plant with the said 4,000 incandescent lamps, with the additional motive power of engines and boilers necessary, for the very purpose of furnishing electric light to the inhabitants of the said city in their private residences and business-houses.

And your orator avers that in and by the said contract the said city has agreed to pay to the said The General Electric Company for the said machinery, apparatus, and electric plant the sum of $47,500.00; and your orator further avers that the said defendant city, through its board of public works or otherwise, has entered into contracts with other persons and corporations to furnish and deliver to it engines and boilers for the motive power and operation of the said electric plant at a cost of about $25,000.00, making the total cost of said electric plant the sum of over $72,000, and
54 that the said city proposes and intends to apply the proceeds of the said bonds and other revenues of the said city to pay for the said electric plant.

Your orator further avers that the said cost of the said electric plant, engines, and boilers exceeds the cost of an electric plant of full and adequate power and capacity to light the streets and other public places and public buildings of the city of Jacksonville by between thirty-five and forty thousand dollars, and that the expenditure of the said sum of thirty-five or forty thousand dollars for the purpose of furnishing lights to the inhabitants of the city with the view and purpose of deriving an income and revenue therefrom is unauthorized and illegal.

3rd amendment. To be inserted after the word "complaint" in the fifth line on page thirteen of said amended bill:

And may it please the court to enjoin the said city of Jacksonville, its mayor, secretary, treasurer, and the members of the council of the said city and all its agents and attorneys, from applying any of the proceeds or monies arising from the sale or hypothecation or pledging of any of the said bonds to the uses and purposes of the said city, and especially from applying any such proceeds or monies to the construction of any electric plant or any other kind of plant for lighting the said city that provides for the furnishing and selling of electric lights to the inhabitants of the said city in their dwelling-houses and business-houses, and from applying any of the revenues of the said city to the purchase of any engine, implements, or electric apparatus for the purpose of furnishing electric light to the inhabitants of the said city in their dwelling-houses and places of business, and from assessing or collecting any taxes upon the property of the inhabitants of the said city for the purpose of paying either the principal or interest of the said bonds or any of them.

55

And may it please the court to appoint a receiver with power and authority to take possession of the said bonds and with power to take all necessary judicial action to recover possession of the said bonds wherever they may be found, or that the said city be ordered and directed to deliver the said bonds into the registry of this court.

BISBEE & RINEHART,
For Complainant.

Endorsed: Circuit court United States, southern district of Florida. John H. Colvin, complainant, *vs.* City of Jacksonville and D. U. Fletcher, as mayor thereof. Amendments filed by leave of court. Filed Oct. 29, 1894. E. O. Locke, clerk. Leave to file the foregoing amendments is hereby granted Oct. 29th. '94. Oct. 29, 1894. James W. Locke, judge. Bisbee & Rinehart, for complainant.

56 In the Circuit Court of the United States, Northern District of Florida. In Chancery.

JOHN H. COLVIN)
vs.
CITY OF JACKSONVILLE *et al.*)

STATE OF FLORIDA,)
County of Duval.)

Before me personally appeared John R. Thurber, to me well known, who, being by me first duly sworn, deposes and says that he is the comptroller of the city of Jacksonville and *ex officio* assessor of taxes for said city; that he is now engaged in the assessment of taxable property within the city of Jacksonville; that he has made diligent search and inquiry among the records of Duval county,

Florida, and among the returns for taxation filed in his office and otherwise to ascertain what property John H. Colvin owns within the limits of the city of Jacksonville and taxable by said city; that the only real property which he can find any evidence that the said John H. Colvin owns within said city is an undivided one-half interest in water lot 11 according to Hart's map of the city of Jacksonville; that said water lot 11 appears by the public records of Duval county to have been sold by John E. Hart, the then owner, to Walter F. Coachman on the 25th day of May, 1893, in consideration of the payment by said Coachman of the sum of $5,000 and the assump-
57 tion by said Coachman of the payment of $17,000 of mortgages upon said property and the assumption of the payment of the city taxes for the years 1891 and 1892 and the State and county taxes for the year 1892; that an undivided half interest in said water lot 11 was conveyed by said Coachman to said John H. Colvin by deed dated the 27th day of May, 1893, and recorded in Record Book "86," pages 386 *et seq.*, in consideration of the payment of $5,000 and the assumption by said Colvin of the payment of one-half of said mortgages and taxes; that in said deed said John H. Colvin is described as being of the county of Duval and State of Florida; that said water lot 11 has not, to any appreciable extent, increased in value within the last year, and that in his opinion a fair valuation of the whole of said water lot 11 would be about $27,000, which is more than the assessed value thereof. Affiant further says that he has been unable to ascertain that the said John H. Colvin owns any other property subject to taxation by said city, with the possible exception of a pleasure yacht which plies upon the St. John's river, tying up sometimes at a dock within the city limits and sometimes at a dock outside the city limits near the residence of said Colvin; that said John H. Colvin is not a resident of the city of Jacksonville, but is a resident of Duval county outside of said city. Affiant further says that no property other than said pleasure yacht was assessed to said Colvin for the year 1893; that said yacht was then as-
sessed at a valuation of $1,300.00, and that the taxes so assessed
58 upon said yacht, amounting to $17.94, have not been paid, although all taxes for said year have been long since due and payable. Affiant further says that said John H. Colvin has not made return to the tax-assessor of the city of Jacksonville of any personal property whatever assessable for taxes for the year 1894, as required by law of all persons owning personal property subject to taxation by the city of Jacksonville.

JNO. R. THURBER.

Sworn to and subscribed before me this 24th day of May, 1894.

[SEAL.] R. C. SCOTT,
Notary Public.

Endorsed: In the United States circuit court, northern district of Florida. In chancery. John H. Colvin *vs.* The City of Jacksonville *et al.* Affidavit of John R. Thurber, for defendants. Filed in evidence Oct. 30th, 1894. E. O. Locke, clerk. A. W. Cockrell & Son, Cooper & Cooper, Young & Barrs, sol's for def'ts.

59 In the Circuit Court of the United States, Northern District of Florida.

JOHN H. COLVIN, Complainant,
vs.
CITY OF JACKSONVILLE *et al.*

THE STATE OF FLORIDA,
County of Duval.

Personally before me comes Duncan U. Fletcher, one of the defendants herein and mayor of the city of Jacksonville, who, being duly sworn, deposes and says that he is now acquainted with and has known the complainant since the complainant moved to and acquired property in the county of Duval, State of Florida, which was three years ago and more.

That the said complainant is not now and never was a resident tax-payer of the city of Jacksonville, nor is he now nor has he been a resident of any kind at the said city; that complainant resides and his actual domicile and place of abode is and has been since he so moved to Florida in Duval county, Florida, south of the St. John's river and about a mile beyond the limits of said city.

That said complainant has not now, nor has he heretofore been taxed or assessed thereon for taxation, tangible property of the value of fifty thousand dollars within the city of Jacksonville, Florida.

That he has not now tangible property subject to taxation within or by the city of Jacksonville, Florida, of the value of twenty thousand dollars.

DUNCAN U. FLETCHER.

60 Sworn to and subscribed before me this the 22nd day of May, A. D. 1894.

[SEAL.] JOHN S. MAXWELL.
Notary Public, State of Florida at Large.

Endorsement: In circuit court of the United States, northern district of Florida. John H. Colvin, complainant, *vs.* City of Jacksonville and D. U. Fletcher, defendants. Affidavit of D. U. Fletcher. Filed in evidence by def't- Oct. 30th, 1894. E. O. Locke, clerk.

61 In Circuit Court United States, Southern District of Florida.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

Personally appeared before me, clerk of said court, H. Bisbee, —— ——, each of whom, being severally sworn, on oath says that he is quite intimately acquainted with John H. Colvin, the complainant in the above suit, and has been for more than three years;

that it is true that said Colvin owns a dwelling-house in Duval county and has occupied it during a part or all of the winter seasons of each year for about three years, with his wife and friends, he, the said Colvin, having no children.

But each of said affiants says that he has frequently heard the said Colvin speak upon the subject of his residence, and that he always spoke of Chicago, State of Illinois, as his home, and that he was a citizen of that State, and was such citizen before he came to Florida, and that he never voted in Florida, but in the State of Illinois, and nowhere else, and had never registered as a voter in Florida; that at the last time affiant heard said Colvin speak upon the subject he said he was contemplating being a can-idate for alderman of the said city of Chicago at the election in the fall of 1894; that affiant is informed by the statements of the said Colvin that he never has intended to become a citizen of Florida, but only to make a winter residence in the latter State, and from such statements and other sources that the said Colvin's possessions of
62 property in Florida are small in value in comparison with his property in Chicago and State of Illinois.

Deponent says that the said Colvin is about fifty-six years of age, and retired from business several years ago; that he is a gentleman of leisure, and spends much of his time travelling abroad and in this country. This deponent knows from correspondence with the said Colvin and by correspondence between him and other citizens of Jacksonville, Florida, that he, the said Colvin, is now and has been for several months last past keeping house on Astor street, in Chicago, Illinois, and is taking an active interest in the political contest now pending in that State and city.

Deponent further says that Louise Stewart executed to the said Colvin, on the first day of April, 1892, a certain indenture of mortgage in which he, the said Colvin, is described "of the city of Chicago, State of Illinois;" that on the 7th day of June, 1892, Charles R. Thebeaut executed to the said Colvin a certain other indenture of mortgage, in which said Colvin is described as "of Chicago, Illinois."

H. BISBEE.

Subscribed and sworn to before me this 31st day of Oct., 1894.
[SEAL.] E. O. LOCKE, *Clerk.*

Endorsement: Circuit court United States, southern dist. of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Affidavits of H. Bisbee. Filed Oct. 31st, 1894. E. O. Locke, clerk.

63 STATE OF FLORIDA, }
County of Duval. }

Before me personally appeared E. W. Vail, to me well known, and being by me first duly sworn, deposes and says: I am and for several years last past have been the actuary of the Florida Abstract & Title Security Company, a corporation doing a general abstract business. As actuary of said company I have been actively

engaged in searching or abstracting the records of Duval county for seven years last past and I am quite familiar with said records. I have searched the public records of Duval county for the purpose of ascertaining what property in the city of Jacksonville appears on said records to be owned by John H. Colvin or within the last few years has been owned by said Colvin, and upon a thorough search of the records I have been unable to find any evidence of the ownership by said Colvin of any property in the city of Jacksonville other than the undivided one-half interest in water lot eleven (11), according to Hart's map of the city of Jacksonville, formerly known as the "Hart's Block" property, on Bay street, in the city of Jacksonville.

E. W. VAIL.

Sworn to and subscribed before me this 30th day of October, A. D. 1894.

[SEAL.] CHARLES L. BURGER.

Endorsement: In the United States circuit court, southern district of Florida. In chancery. John H. Colvin *vs.* City of Jacksonville *et al.* Affidavit of E. W. Vail for defendants. Filed on hearing Oct. 31st, 1894. E. O. Locke, clerk. A. W. Cockrell & Son, Cooper & Cooper, Young & Barrs, sol's for def'ts.

64 STATE OF FLORIDA,)
County of Duval.)

Before me personally appeared Charles F. Verelst, to me well known, and being by me first duly sworn, deposes and says: I am and for four years last past have been county assessor of taxes for Duval county, Florida, and for about 10 years past have been deputy assessor, and as such officer it has been my duty and I have kept myself informed as to the ownership of property in Duval county subject to taxation and have kept myself posted as to the transfers of property appearing upon the public records of Duval county. Since the filing of the bill of John H. Colvin against the city of Jacksonville, in the spring of 1894, I have made diligent inquiry and search to ascertain what property the said John H. Colvin owns subject to taxation in or by the city of Jacksonville, and I have been unable to learn, either from the public records of Duval county or by other inquiry and search, that the said John H. Colvin owns or within the last few years has owned any property in the city of Jacksonville subject to taxation by the city of Jacksonville other than and excepting only an*d* undivided one-half interest in water lot 11, according to Hart's map of the city of Jacksonville, formerly known as the "Hart's Block property," on East Bay street, in the city of Jacksonville, and saving and excepting a small pleasure yacht, which, during the summer season, is kept tied up at what is known as "Jones' boat yard," in the city of Jacksonville. The proper place of taxation of said pleasure yacht I am not informed. I am well acquainted with the value of real estate

in the vicinity of said water lot 11 and improvements thereon and, in my opinion, the value of the whole of said water lot, with the improvements thereon, is about twenty-eight thousand dol-
65 lars, and the value of an undivided one-half interest in the same is worth about fourteen thousand dollars. I have had occasion to investigate to some extent the value, and I think I know about the value thereof, of said pleasure yacht, and the value of said pleasure yacht is, in my opinion, about three thousand dollars. Said John H. Colvin has not made return to my office of any other property which he owns which is subject to taxation in the city of Jacksonville.

CHARLES F. VERELST.

Sworn to and subscribed before me this 30th day of October, A. D. 1894.

[SEAL.] CHARLES L. BURGER,
Notary Public, Duval County, Fla.

Endorsement: In the United States circuit court, southern district of Florida. In chancery. John H. Colvin *vs.* City of Jacksonville *et al.* Affidavit of C. F. Verelst for defendants. Filed on hearing Oct. 31st, 1894. E. O. Locke, clerk. A. W. Cockrell & Son, Cooper & Cooper, Young & Barrs, sol's for def'ts.

66 In the United States Circuit Court, Southern District of Florida.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

Personally appeared before me, clerk of said court, A. G. Hartridge, who, being duly sworn, on oath says that he is quite intimately acquainted with John H. Colvin, the complainant in the above suit, and has been for more than three years; that it is true that said Colvin owns a dwelling-house in Duval county and has occupied it during a part of all of the winter seasons for about three years with his wife and friends, he, the said Colvin, having no children.

And the said affiant says that he has frequently heard the said Colvin speak upon the subject of his residence, and that he always spoke of Chicago, Illinois, as his home, and that he was a citizen of that State, and that he never voted in Florida, but in the State of Illinois; that he for several years was a member of the city council of the city of Chicago, State of Illinois, and that he had never registered as a voter in Florida. In August last affiant visited said Colvin at his home, No. 17 Astor street, Chicago, Illinois, and at that time he (the said Colvin) intended to be a can-idate for the office of alderman in the city of Chicago, Illinois, at the next city election, and that he was then and is now taking an active interest in the political contests now pending in the State of Illinois.

67 Your affiant is informed and believes by statements of the said Colvin that the said Colvin never intended to become a citizen of the State of Florida, but only to make a winter residence in said State, and from such statements and other sources that the said Colvin's possessions and property in the State of Florida are small in value in comparison with those in the city of Chicago and Illinois.

Affiant says that said Colvin is about fifty-six years of age, and that he retired from business several years ago; that he is a gentleman of leisure and spends much time in traveling abroad and in this country.

This deponent knows from correspondence and from having visited said Colvin at his home in Chicago, Illinois, that he is now and has been for several months last past *has been* keeping house at No. 17 Astor street, Chicago, Illinois.

Deponent further says that Louise Stewart executed to the said Colvin, on the 1st day of April, 1892, a certain indenture of mortgage in which he, the said Colvin, is described "of the city of Chicago, Illinois;" that on the 7th day of June, 1892, Charles R. Thebeaut executed to the said Colvin a certain other indenture of mortgage in which said Colvin is described as "of Chicago, Illinois."

A. G. HARTRIDGE.

Sworn to and subscribed before me this 31st day of October, A. D. 1894.

[SEAL.] E. O. LOCKE, *Clerk.*

Endorsement: John H. Colvin *vs.* City of Jacksonville, Fla. Affidavit of Augustus Hartridge. Filed Oct. 31st, 1894. E. O. Locke, clerk.

68 Circuit Court United States, Southern District of Florida.

JOHN H. COLVIN, Compl't,
vs.
CITY OF JACKSONVILLE *et al.*, Defendants.

Please take notice that the motion for appointment of a receiver or for a decree requiring the defendants to surrender the bonds in question into the possession of the registry of the court in this cause will be called up for hearing before the said circuit court at Key West, Florida, at 10 o'clock a. m. on the 9th day of the present month, or as soon thereafter as the motion can be heard.

BISBEE & RINEHART,
For Complainants.

To Messrs. Cooper & Cooper, A. W. Cockrell & Son, Young & Barrs.

November 2nd, 1894.

Service of copy acknowledged this 2nd day of Nov., 1894.

COOPER & COOPER, *For Def'ts.*

Endorsed: Circuit court United States, southern dist. of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Notice of hearing of motion for appointment of receiver. Filed Nov. 3rd, 1894. E. O. Locke, clerk.

69 Circuit Court United States, Southern District of Florida.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

Motion for Injunction.

Please take notice that on next Friday, November 9th, 1894, at Key West, at 10 o'clock a. m., or as soon thereafter as the court can hear the motion, the complainant will renew his motion for an injunction, as prayed for in the bill of complaint, and also a motion to set aside the order of the Honorable James W. Locke, judge, made at Jacksonville on the 3rd inst., denying the motion for injunction.

This latter motion is made on the ground that the said judge erred in *its* ruling as to the amount in controversy.

The Supreme Court of the United States has directly decided that in a suit by a tax-payer to have bonds issued by a municipality or county declared invalid the amount of the said bonds is the matter in dispute and not the amount of taxes to be levied each year.

Nov. 5th, '94.

BISBEE & RINEHART,
Complainant's Solicitors.

Service of copy received this 5th day of Nov., 1894.

COOPER & COOPER,
Sol's for Def'ts.

Endorsement: Circuit court United States, southern district of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Notice of motion for injunction, etc. Filed Nov. 5th, 1894. E. O. Locke, clerk. Bisbee & Rinehart, complainant's sol't's.

70 Circuit Court United States, Southern District of Fla.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

Now comes the complainant, by Bisbee & Rinehart, his solicitors, and moves the court to set aside the order of the Honorable James W. Locke, judge of said court, denying the motion for injunction made on the 3rd inst., and moves for a receiver, as heretofore prayed for.

The motion to set aside the said order is made on the ground that the said judge erred in ruling as to the amount in controversy,

as the Supreme Court of the United States has directly decided that in a suit by a tax-payer to have bonds issued by a municipality or county declared invalid the amount of said bonds is the matter in dispute and not the amount of taxes to be levied each year.

Nov. 5th, 1894.

BISBEE & RINEHART,
Complainant's Solicitors.

Endorsed: Circuit court United States, southern district of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Motion to set aside order and for a receiver. Filed Nov. 5, 1894. E. O. Locke, clerk.

71 Circuit Court of the United States, Southern District of Florida.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

This cause having come on for a hearing in vacation upon motion for an injunction and *and* the appointment for a receiver upon the bill, amended bill, answer, and affidavits, and having been fully heard and considered and said injunction denied, and upon further motion to set aside the said order denying said injunction, having been made in term and been fully heard and considered, and motion having been made by complainant that he have leave to amend his bill by joining other parties, upon due consideration it is hereby ordered that said motion to amend by bringing new parties be denied and the bill dismissed for want of jurisdiction.

JAMES W. LOCKE, *Judge.*

Endorsed: Colvin *vs.* City of Jacksonville. Order dismissing. Filed Dec. 4, '94. E. O. Locke, clerk.

72 In Circuit Court United States, Southern District of Florida.

JOHN H. COLVIN *vs.* THE CITY OF JACKSONVILLE *et al.*	Motion for Leave to Amend & to Take Testimony on the Question of the Taxable Property of Complainant in said City.

Comes now the complainant, by Bisbee & Rinehart, his solicitors, and moves for leave to amend his amended bill by joining with him in such bill the names of other owners of property assessable by the said city, so that the joint interest of such owners and complainant will exceed the sum of $2,000, and so that the bill will read "in behalf of the other taxable inhabitants" of the said city. This motion is on the ground that on yesterday, the 3rd day of December, 1894, the court orally announced its decision denying complainant's motion to set aside the order of the Hon. Jas. W.

Locke, judge, made in vacation, overruling complainant's motion for a temporary injunction, and orally on said day announced that if two or more had joined in such a bill and that if their combined interest exceeded $2,000 the court would have jurisdiction of the case; also on the further ground that the court, on the said 3rd day of December, announced that the court would enter a decree dismissing the amended bill of complaint for want of jurisdiction, for the reason that the amount involved or in dispute did not exceed $2,000.

2nd. Because this is the first opportunity for applying for such an amendment since the court announced its said decision.

73 3rd. Because that no application has been filed in the cause and the case stands on exceptions to the answer.

1. And complainant here presents his objection to dismissing his bill on the ground that the jurisdiction's amount is not involved, for the reason and on the ground that the amended bill alleges that complainant owns taxable property in said city of the value of about $50,000, and states a case within the jurisdiction of the court, and has not yet had an opportunity to prove it, and cannot prove it until a master or examiner has been appointed to take testimony in the cause, unless the court by its order directs some other mode of taking testimony.

2. Because on overruling a motion for a temporary injunction on bill and answer and *ex parte* affidavits and other *ex parte* proof this court has no legal right or power to dismiss the bill, which states facts which make a case within the jurisdiction of the court, and complainant prays leave to be heard on the above motions by his solicitors.

Dec. 4th, 1894.

BISBEE & RINEHART,
Complainant's Solicitors.

Endorsed: In circuit court United States, southern district of Florida. John H. Colvin *vs.* City of Jacksonville *et al.* Motion for leave to amend, stating reasons for not dismissing bill. Filed Dec. 4, 1894. E. O. Locke, clerk.

74 Circuit Court United States, Southern District of Florida.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE and D. U. FLETCHER, as Mayor Thereof.

The above-named complainant, John H. Colvin, conceiving himself aggrieved by the decree of this court entered on December 4th, 1894, dismissing his amended bill of complaint in the above-entitled cause, doth hereby appeal from said decree dismissing said cause to the Supreme Court of the United States, and prays that this his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which the said order was made, duly

authenticated, may be sent to the Supreme Court of the United States.

BISBEE & RINEHART,
Sol's for Complainant and Appellant.

And now, to wit, on December 10th, A. D. 1894, it is ordered that the said appeal be allowed as prayed for.

Done in open court this 10th Dec., 1894.

JAMES W. LOCKE, *Judge.*

Endorsement: Circuit court United States, southern district of Fla. John H. Colvin *vs.* City of Jacksonville *et al.* Order of appeal. Filed Dec. 10th, 1894. E. O. Locke, clerk.

75 Circuit Court United States, Southern District of Florida.

JOHN H. COLVIN, Compl't,
vs.
CITY OF JACKSONVILLE and D. U. FLETCHER, as Mayor Thereof.

Assignments of Error.

Comes now the complainant, by his solicitors, Bisbee & Rinehart, and assigns as error on this appeal as follows:

1st. The court erred in entering a decree dismissing the amended bill of complaint on the ground that the case was not at issue; that the amended bill of complaint stated a case within the jurisdiction of the court, and complainant has never had an opportunity of proving the jurisdictional facts alleged in the amended bill, and in the state of the record was not required to prove such jurisdictional facts until the case was at issue and an examiner or master appointed to take testimony.

2nd. The court erred in entering a decree dismissing the bill without giving the complainant the right and opportunity to be heard upon the power of the court to dismiss the bill in the present state of the record.

Wherefore complain-t prays that the said decree dismissing the amended bill of complaint may be reversed.

BISBEE & RINEHART,
For Complainant & Appellant.

76 Endorsement: Circuit court United States, southern district of Florida. John H. Colvin, compl't, *v.* City of Jacksonville and D. U. Fletcher, as mayor thereof. Assignments of error. Filed Dec. 10, 1894. E. O. Locke, clerk.

77 United States Circuit Court for the Southern District of Florida.

JOHN H. COLVIN, Appellant,
v.
CITY OF JACKSONVILLE and D. U. FLETCHER, as Mayor Thereof, Appellees.

Know all men by these presents that we, John H. Colvin, as principal, and Joseph H. Durkee, John C. L'Engle, James P. Taliaferro, Samuel B. Hubbard, and Henry Robinson, as sureties, are held and firmly bound unto the above-named The City of Jacksonville and D. U. Fletcher, as mayor of said city, in the sum of five hundred dollars ($500.00), to be paid to the said City of Jacksonville and said D. U. Fletcher, as mayor thereof; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Whereas the above-named John H. Colvin has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit on the 4th day of December, 1894, by the circuit court of United States for the southern district of Florida:

Now, therefore, the condition of this obligation is such that if the above-named John H. Colvin shall prosecute the said
78 appeal to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. COLVIN. [SEAL.]
JOSEPH H. DURKEE. [SEAL.]
JOHN C. L'ENGLE. [SEAL.]
JAMES P. TALIAFERRO. [SEAL.]
SAMUEL B. HUBBARD. [SEAL.]
H. ROBINSON. [SEAL.]

Approved this 10th Dec., 1894.

JAMES W. LOCKE, *Judge.*

Endorsed: Circuit court United States, southern district of Fla. John C. Colvin, appellant, *v.* City of Jacksonville & D. U. Fletcher, as mayor thereof, appellees. Bond for appeal. Filed Dec. 10th, 1894. E. O. Locke, clerk.

79 Circuit Court United States, Southern District of Florida.

JOHN H. COLVIN, Compl't and Appellant,
vs.
CITY OF JACKSONVILLE and D. U. FLETCHER, as Mayor Thereof,

UNITED STATES OF AMERICA, *ss:*

To the City of Jacksonville and D. U. Fletcher, as mayor thereof, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on Wednesday, the 26th day of December, A. D. 1894, pursuant to an appeal filed in the clerk's office of the Supreme Court of the United States for the southern district of Florida, wherein John H. Colvin is appellant and the said City of Jacksonville and D. U. Fletcher, as mayor thereof, are respondents, to show cause, if any there be, why the judgment and decree in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 10th day of December, 1894.

[SEAL.] JAMES W. LOCKE, *Judge.*

80 Endorsement: Circuit court United States, southern district of Fla. John H. Colvin, compl't & appellant, *vs.* City of Jacksonville *et al.* Citation. Received the within citation at Jacksonville, Fla., Dec. 10th, 1894, and executed it by delivering two certified copies of same to D. U. Fletcher, mayor of Jacksonville, and exhibited to him at the same time the original at the city of Jacksonville, Fla., on the 11th day of December, 1894, in the southern district of Florida. James McKay, U. S. marshal. Filed Dec. 11th, 1894. E. O. Locke, clerk.

81 United States Circuit Court, Fifth Circuit, Southern District of Florida.

JOHN H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

I, Eugene O. Locke, clerk of the circuit court of the United States for the southern district of Florida, do hereby certify that the foregoing pages, numbered from one to eighty, inclusive, constitute a true copy of the proceedings and a correct transcript of the record of the judgment in the above-entitled case as prepared or directed by complainant's solicitors.

Seal of U. S. Circuit Court, South. Dist. Florida.

Witness my hand and the seal of said court, at the city of Jacksonville, in the district and circuit aforesaid, this twenty-first day of December, A. D. 1894, and of our Independence the 119th year.

E. O. LOCKE, *Clerk.*

82 United States Circuit Court, Fifth Circuit, Northern District of Florida.

C. H. COLVIN
vs.
CITY OF JACKSONVILLE *et al.*

This is a suit by bill praying an injunction against the city of Jacksonville and the mayor to restrain the issue of one million dollars — bonds which it is alleged have been authorized by an election held for that purpose. In the original bill the complainant alleged that he held property to the amount of about $10,000 liable to assessment by the city of Jacksonville. In the amended bill that amount was increased to about $50,000, but in the affidavit of the complainant in support of the allegations of said bill it was stated that affiant would not declare that the entire amount was subject to assessment by the said city, but he alleged that the amount of taxes that he would have to pay under the bonds so issued would exceed the sum of $2,000. The answer alleges that the amount of property held by complainant was far less than $50,000, and that under no circumstances would the amount of taxes assessed thereon equal the jurisdictional amount of $2,000.

The general rule in chancery practice that want of jurisdiction can only be taken advantage of by a special plea for that purpose does not hold good in suits in the courts of the United States. The act of March 3, 1875, provides that when at any time it shall
83 appear to the satisfaction of the court that jurisdiction is lacking it shall be the duty of such court to proceed no further, but dismiss or remand the suit. The question of jurisdiction is therefore an ever-present one, to be regarded and considered at any time, whether presented by a plea, issue raised by the parties, or conclusions of the court.

The question in this case, and the only one it has been considered necessary to examine, is whether the matter in dispute is sufficient to give this court jurisdiction. This must be determined upon two points: First, what is to determine the value of the matter in dispute? and, second, has the plaintiff such an interest as is required?

It is contended, first, in behalf of complainant that no matter how small his interest may be in the result of the suit, the validity or invalidity of the entire issue of a million dollars of bonds is the matter in controversy, and consequently the amount of the bonds sought to be enjoined is the matter in dispute, while the defendants urge that the complainant must show that he has personally $2,000 interest in the question. The question whether or not the bonds, if issued, would be valid would apply to the entire million of dollars, and whether it is within the power of an individual who has less than the jurisdictional amount of interest in the suit to present such question in this court is the point requiring consideration. This identical question has been before the circuit courts of the United States in several of the circuits, and it
84 has been held in "Murphy *vs.* East Portland *et al.*," 42 Fed. Rep., 308, and in "Adams *vs.* Douglass Co.," 1st Fed. Cases,

106, and in several other cases, that the total amount of bonds or taxes sought to be enjoined was not the matter in dispute and measure of the jurisdictional amount, but that it was the interest which the complainant might have in the question and the amount which he might be compelled to pay on account of the issue of bonds or levy of taxes. This exact question does not appear to have been before the Supreme Court, but there are found several cases where the manner of determining the matter in dispute has been considered. The language declaring the limit of the original jurisdiction of the circuit court is similar to that fixing the appellate jurisdiction of the Supreme Court, and the cases where the question of such appellate jurisdiction has been passed upon may well be examined in this connection. In "Gibson *vs.* Shufeldt," 122 U. S., 27, we find the rule stated that the sum or value really in dispute between the parties is the test of jurisdiction, and, referring to the numerous cases therein cited where that principle has been applied under different states of facts so as to more clearly illustrate its application, we find that the interest of the complainant and not of the defendant alone is to be considered in determining the question of jurisdiction. It is true that the important question in that case was whether personal and individual or aggregate interests were to be consid-
85 ered, but the entire language of the opinion shows that it is the interest between the parties to the suit that is to determine.

In "Market Co. *vs.* Hoffman," 101 U. S., 112, the court, speaking by Mr. Justice Strong, says: "While it may be true that if Hoffman was the sole complainant the amount in controversy would be insufficient to justify an appeal either by him or by the company, the case is one of two hundred and six complainants suing jointly." In "Russell *vs.* Stansell," 105 U. S., 303, the validity of an assessment far exceeding the jurisdictional amount was attacked, but the interests of complainants was held to be the true measure of the matter in dispute. In numerous cases this same doctrine has been laid down and it has been frequently declared that the common fund or the interest of defendant in question could not alone control, and in no case have I found that the value of the interest of the complainant or plaintiff has been ignored and that of the defendant considered the matter in dispute.

It is true that there are found two classes of cases where the subject-matter has justified language which would appear to present an exception to this rule. In the "Railroad Company *vs.* Ward," 2 Black, 485, the principle is laid down that in a bill in equity to abate a public nuisance the private party sues rather as a public prosecutor than on his own account, and that the want of sufficient amount of damage having been sustained by him to give the Federal court jurisdiction will not affect the remedy as
86 the removal of the obstruction is the matter in controversy.

Numerous cases are also found where tax-payers or stockholders of a corporation have brought suit in behalf of themselves and all other parties similarly situated, but in each of these cases the interest of the numerous other stockholders or tax-payers has

been considered in arriving at the value of the matter in dispute; but this is a suit neither to abate a public nuisance or one in which numerous co-complainants have been joined. The matter in dispute, as far as the complainant is concerned, may be determined by a positive and actual amount, which only requires computation, and he has sued in his own behalf, and the interest of no one else can be considered as joined with him. In the case of "Brown *vs.* Trouddale," 138 U. S., which is relied upon by the complainant herein as positively declaring that the validity of the entire issue of bonds was the matter in dispute, we find that the entire number of tax-payers of the county were joined and considered as co-complainants in the suit, and their interest was exactly equal to the entire issue of bonds, and that it was very truly said by the court that the validity of the entire issue of bonds was the matter in dispute, but I fail to find anything in that decision which would justify the conclusion that had a single tax-payer whose interest has been less than the jurisdictional amount attempted to enjoin the collection of the tax the court would not have examined the question of his private interest, as they did in "Russell *vs.* Stansell." I fail
87 to find any decision of the Supreme Court that would justify the complainant in demanding the adjudication of the question in this court, unless he can show the jurisdictional amount of interest in himself. As far as the record shows, the remaining interests are between citizens of the State of Florida and a municipal corporation of the same State.

Unquestionably the amendment of the bill was for the purpose of giving the court jurisdiction, but the qualification of the amount declared in the amendment found in the affidavit seeking to justify its allegations takes from it all force which might come from the statement of his assessable property in Jacksonville.

The damage to complainant in the issue of the bonds can be positively and exactly measured and is but a conclusion from the fact of the amount of property he has within the city, and the truth of the allegation therein in regard to the amount of taxes which he would be compelled to pay under the issue of bonds can only be determined by ascertaining the amount of property upon which such taxes could be assessed, and the statement that he would have to pay over $2,000 without alleging the primary facts that would justify such conclusion cannot be accepted. The amount of property which he has liable to such taxation has been left undetermined and indefinite under his affidavit, and the only allegations that can be relied upon in determining it are found in the original bill and the affidavits presented regarding the
88 actual property owned by him and regarding the records and tax books which claim to show the amount of his assessable property. As a citizen of Illinois and resident of Chicago he was only liable for taxation upon real property in the city of Jacksonville or such permanent personal property as might be found, and carefully considering the allegations upon this point and the facts that after the issue made by the defendant as to the amount of his taxable property for jurisdictional purposes no

counter-affidavit was made in his behalf, although affidavits were filed upon other matters, it is considered that the amount of his taxable property must be accepted as that shown by the affidavits filed, and that it is about, and not exceeding, fourteen thousand dollars. Finding, as I do, that the value of complainant's taxable property in Jacksonville does not exceed fourteen thousand dollars, his tax each year would amount to but $53.85, and as the total amount of the bonds was to be paid in thirty years and a sinking fund of one-thirtieth of the entire amount would be raised each year, complainant's share would be but about $35.90, the principal being diminished by one-thirtieth each year the interest — paid, and consequently the tax would be so reduced and such payments would represent a regularly decreasing series, so that the aggregate of taxes paid on account of interest in the 30 years would be but $807.75; but the sinking fund would necessarily be paid each year and would amount to $1,077.00, making an aggregate that would have
89 to be paid by complainant during the life of the issue of the bonds of $1,884.60; but the record shows that there is already due from the property which is situated within the limits of what was Old Jacksonville, and which has a valuation of about eight million dollars, within which limits is the property of complainant, an indebtedness of two hundred thousand dollars, upon which there is being paid an interest of eight per cent., which indebtedness is to be paid from the loan sought to be enjoined, and which would therefore reduce the actual interest which complainant has in this suit to that extent. The same mode of computation will show that the complainant would pay on account of the present indebtedness $420 interest and $350 sinking fund, or an aggregate of $770; so that, not recognizing or regarding the alleged contemplated investment of a portion of the million dollars' loan in water works, public market-house, and electric light plant, by which it is alleged the city may derive an income or save great expense, it does not appear that the taxes of the complainant can be increased more than twelve hundred dollars ($1,200) at the most. The issue upon this question was plainly made by the allegations of the answer that denied that complainant had an interest sufficient to give the court jurisdiction. It was peculiarly within complainant's power to show affirmatively that he had such interest, but after every opportunity was given him, the answer having been filed several months and he had filed affidavits upon other points, but none upon this, the case was called for
a hearing upon his motion for the granting of an injunction
90 and appointment of a receiver upon the amended bill, answer, and affidavits, with no asking or opportunity for a ruling upon the exceptions to the answer then pending. A full hearing, occupying nearly three entire days, was had, the numerous affidavits were introduced and read without objection, and no desire was expressed to introduce further proof upon the question of jurisdiction or motion to amend was made until after the announcement of the decision of the court and until upon motion of the complainant the

matter had been again taken under consideration and, finally, the former decision affirmed.

The statute of 1875 makes it the duty of the court, whenever it appears to the satisfaction of the court that the cause pending before it is not within its jurisdiction, to dismiss or remand. This conclusion of the court must be reached upon the record in the cause and the legal evidence introduced, or it may be upon the failure of plaintiff to bring himself within the jurisdiction. It is not considered that it is compulsory upon the court to permit amendments so as to make a new case, and particularly to bring in new parties, but that it is within its discretion. In this case had a motion been made to join with complainant as co-complainants certain parties, naming them and showing that their interests would give the court jurisdiction, such a motion might have received more consideration; but such was not the case. The motion assumed that some citizen of another State than Florida might be found to come in as
91 co-complainant, but that was not shown to be certain. A stage in the proceedings has been reached where it appears to the satisfaction of the court, upon what is considered legal evidence and the failure of complainant, after the issue had been made and ample opportunity given to show facts which would justify the court in taking jurisdiction, that the suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of this court, and the bill will therefore be dismissed.

JAMES W. LOCKE, *Judge.*

I, Eugene O. Locke, clerk of the United States circuit court, fifth judicial circuit, southern district of Florida, do hereby certify that the foregoing is a true and correct copy of the original opinion in the case of "John H. Colvin *vs.* The City of Jacksonville *et al.*" from the files of my office.

Witness my hand and the seal of said court, at the city of Jacksonville, in the district and circuit aforesaid, this 22nd day of December, A. D. 1894, and of our Independence the 119th year.

[Seal of U. S. Circuit Court, South. Dist. Florida.]

E. O. LOCKE, *Clerk.*

Endorsed on cover: Case No. 15,758. S. Florida C. C. U. S. Term No., 874. John H. Colvin, appellant, *vs.* The City of Jacksonville and D. U. Fletcher, as mayor thereof. Filed December 26, 1894.

157-368

157-368

Office Supreme Court, U. S.
FILED.
FEB 12 1895
JAMES H. McKENNEY,
CLERK.

SUPREME COURT UNITED STATES.

JOHN H. COLVIN,
APPELLANT,
vs.
CITY OF JACKSONVILL, ET AL,
APPELLEES.

OCTOBER TERM,
1894.
No. 874.

BRIEF FOR APPELLANT.

H. BISBEE,
For Appellant.

VANCE PRINTING CO., JACKSONVILLE.

Supreme Court United States.

JOHN H. COLVIN,
APPELLANT,
vs.
CITY OF JACKSONVILL, ET AL,
APPELLEES.

OCTOBER TERM,
1894.
No. 874.

This is an appeal from the Circuit Court of the United States for the Southern District of Florida. The only question on this appeal is the jurisdiction of the Court below.

STATEMENT OF FACTS.

This suit was brought by John H. Colvin, a citizen of the State of Illinois. The object and relief sought was to enjoin the City of Jacksonville from disposing of its bonds to the amount of $1,000,000 par value. The bill sets forth two grounds for the relief.

The first ground is that after the qualified electors of the City of Jacksonville approved of the issue of a bond, payable in lawful money, the City Council, by ordinance, changed the medium of payment and provided

that the bonds, principal and interest, should be payable in gold coin of the United States.

Second. On the ground that the law under which the question of issuing the bonds was submitted to the qualified electors was illegal and void, because repugnant to the Constitution of the State and of the United States. But as the merits of the case are not involved on this appeal, these questions cannot now be determined by this Court. The substantial facts to be considered on this appeal contained in the record are as follows:

The original bill was filed May 3, 1894.

Record, pages 1 to 5 inclusive.

That bill alleged that the defendant city was about to issue and sell its bonds to the amount of $1,000,000, bearing interest at the rate of five per cent. per annum, and that complainant was the owner of property within the limits of the said city of Jacksonville, to the amount in value of about $10,000, subject to assessment for taxes.

Record, page 1.

On the 21st of May, 1894, and before any answer, plea or demurrer had been interposed to the original bill, complainant filed his amended bill. Record, pages 5 to 12 inclusive.

This amended bill sought the same relief as the original bill, and alleged that the complainant was the owner of property subject to taxation, within the limits of the defendant city, to the amount of $50,000, and that the assessed valuation of all the property, real and personal, within the limits of the said city for the year 1893 was $13,011,290, of which the real estate was assessed at $10,654,950, and the personal property was assessed at $2,356,340.

See Record, page 6.

On May 22d, 1894, the day after the amended bill was filed, the defendant moved to dismiss the amended bill because it did not state a case within the jurisdiction of the court.

Record, page 2.

On the 24th of May of the same year the court denied said motion.

Record, page 12.

On the 29th of Mayof said year the defendant filed its answer to the amended bill of complaint.

Record, pages 22 to 23 inclusive.

It will be observed that this amended bill of complaint superseded and took the place of the original bill for all the purposes of the suit.

On June 6th, 1894, the complainant filed exceptions to the answer.

Record, page 23.

These exceptions have never been disposed of, although submitted to the judge by agreement filed on the 11th day of August, 1894.

See Record, page 24.

Consequently no replication was ever filed in the cause, and the cause was not at issue. In this state of the record the complainant on October 23d of said year made a motion for a writ of injunction and appointment of a receiver, as prayed for in the amended bill of complaint. Although the motion does not so state, it was (necessarily) a motion for a temporary writ of injunction, the case not being in condition to be heard on its merits on final hearing, no

replication having been filed and the cause standing on exceptions to the answer.

On October 29th of said year some amendments were filed to the amended bill (Record, pages 26 to 28 inclusive) which cut no figure on this appeal.

The answer of defendants alleged on information and belief that the complainant was not a citizen of the State of Illinois, and denied that complainant had taxable property within the City of Jacksonville to the amount of $50,000. The answer, however, admits that the complainant owned a half interest in one piece of real estate that was assessed at $24,000, and also owned a pleasure yacht which was assessed at $1,300.

Record, page 13.

The answer also admits that the taxable property of the City of Jacksonville is the amount stated in the bill of complaint. Record, page 13. The remaining portion of the answer is to the merits of the bill.

On the motion for an injunction and appointment of a receiver the defendants read in evidence the affidavit of John R. Thurber, the Assessor of Taxes of defendant city. This affidavit (Record, page 29) states that the lot of land of which complainant owns one-half, is worth $27,000, and that his yacht is assessed at $1,300.

Defendant also read in evidence affidavit of Charles F. Verelst (Record pages 32 and 33), which affidavit states that the said lot of land and improvements is worth $28,000, and that the said pleasure yacht is worth $3,000.

Defendant also read in evidence affidavit of E. W. Vail (Record, pages 31 and 32) to the effect that *he could not find any evidence on record* of the ownership by complain-

ant of any property in the City of Jacksonville, other than his one undivided half interest in water lot No. 11.

Defendant also read in evidence affidavit of Duncan U. Fletcher, to the effect that the complainant has a residence and domicile in Duval County, State of Florida. The affidavit does not allege that he is not a citizen of the State of Illinois.

The complainant did not put in evidence any affidavits in support of the averment in the amended bill that he had assessable property to the amount of $50,000 within the City of Jacksonville; but did read in evidence the affidavit of H. Bisbee (Record, 30 and 31) and the affidavit of A. G. Hartridge (Record, pages, 33 and 34) to support his averment that he was a citizen of the State of Illinois.

In this condition of the record the Court, on the 3d day of December, 1894, orally announced its decision, to wit: That the Court denied the motion for injunction, and would dismiss the amended bill of complaint.

And thereupon the complainant filed a motion and asked leave to amend his amended bill of complaint by joining with him in said bill the names of other owners of property assessable by the said city, so that the joint interest of such owners and complainant would exceed the sum of $2,000. This was for the purpose of removing the objection to the jurisdiction of the Court that the amount involved in dispute did not exceed the sum of $2,000.

See this motion, Record, pages 36 and 37.

On December 4th the Court made a final decree denying the injunction, and denying leave to amend the bill, and dismissing the bill for want of jurisdiction, on

the ground that the matter in dispute did not exceed $2,000.

Reeord, page 36.

From this decree this appeal is prosecuted.

ASSIGNMENT OF ERRORS.

The first error assigned is that the Court erred in dismissing the amended bill of complaint on a motion for temporary injunction, on the ground that the cause was not at issue; that the amended bill of complaint stated a case within the jurisdiction of the Court, and complainant never had an opportunity to prove the jurisdictional facts alleged in the bill, and in the state of the record was not required to prove such jurisdictional facts until the cause was at issue, and an examiner or master appointed to take testimony.

2. That the Court erred in entering a decree dismissing the bill without giving the complainant the right and opportunity to be heard upon the power of the Court to dismiss the bill in the then present state of the record.

See transcript of record, page 38.

The opinion of the Court is in the Record, pages 41 to 45.

ARGUMENT.

First Point. It is apparent from the statement of the facts made that no replication had been filed to the amended bill of complaint, that the case stood on exceptions to the answer at the time the motion for temporary injunction in the case was made, and was not at issue. It is also apparent that the cause was not set down for hearing on bill and answer. By reading that part of the opinion of the learned judge, found on page 45 of the

Record, it will be seen that the Court treated the cause as if it had been set down for hearing on bill and answer, or for a final hearing on evidence taken. This was a great surprise to complainant and his counsel.

This we regard as a very flagrant error. The Court dismissed the bill, as shown by its decree and its opinion, on the ground that the "*matter in dispute*" did not exceed the sum or value of $2,000; based its decree on the ground that the complainant on the motion for injunction did not furnish evidence to establish that the complainant had taxable property enough in the city to give the Court jurisdiction. The Court fell into the error of assuming that the complainant was bound to prove on motion for temporary injunction all jurisdictional facts, as if the case was on final hearing, and that complainant had no right to have the exceptions to the answer disposed of, file replication, and to take testimony in the usual mode to establish the averments of his bill.

Undoubtedly, in order to obtain the temporary injunction, the complainant should establish jurisdictional facts to the satisfaction of the Court; otherwise the Court would be justified in denying *that motion*. But where the bill of complaint alleges a case within the jurisdiction of the Court the complainant has the right, after the cause is at issue, to take testimony and prove, if he can, such jurisdictional facts, and if those facts are established, the complainant is entitled to decision upon the merits of the case.

This Court has decided that the court of original jurisdiction has no power under the fifth section of the judiciary act of 1875, to dismiss a case on demurrer, or on motion, where the declaration or bill of complaint states a case within the jurisdiction of the Court susceptible of proof.

Barry vs. Edmunds, 116 U. S., 550, 561.

The Court below *has assumed* that the complainant could not prove that he would have to contribute over $2,000 in taxes, to pay the interest on the $1,000,000 of bonds, at five per cent. per annum, and a sinking fund to pay the principal at maturity. The bonds matured thirty years from date. This the Court had no right to assume, and had no power to deprive the ~~claimant~~ complainant of an opportunity to prove that he would have to pay, in taxes, over $2,000. If the objection had been made by demurrer to the amended bill, that it did not describe the assessable property of complainant, the bill could have been amended in that respect; but no demurrer was filed. A motion to dismiss the amended bill because it did not state a cause within the jurisdiction of the Court, had been denied before the answer was filed. The answer denies that complainant's assessable property was of the value of $50,000. Thus issue was made on that point, and we repeat, the complainant had the right to take testimony on it. This is especially so for the following reasons :

The theory of the original bill was that the amount in dispute was the amount of the alleged invalid bonds, to wit: $1,000,000 par value, the issue of which the bill sought to enjoin. Defendant moved to dismiss the original bill. After complainant had been informed by this motion that the defendant would insist that the complainant must allege and prove that he would have to contribute over $2,000, in taxes, toward the payment of the bonds, he amended his bill alleging that he had about $50,000 of assessable property within the city limits. The Court did not find, as a matter of fact, according to its opinion, that the amount of property stated in the amended bill was colorable, and had been laid beyond the amount of reasonable expectation of proving it for the

purpose of fraudulently creating a case within the jurisdiction of the court. The Court, in its opinion (p. 41 of the record) comments on the fact that the original bill alleged taxable property to the amount of $10,000, and that the amended bill increases it to $50,000, and that in the affidavit of complainant to the amended bill affiant did not declare that the entire amount of his property in the City of Jacksonville was subject to assessment by the said city. The affidavit referred to is on pages 23 and 24 of the record.

The Court also, on page 43 of the record, says as follows: "Unquestionably the amendment of the bill was for the purpose of giving the Court jurisdiction, but the qualification of the amount declared in the amendment found in the affidavit seeking to justify its allegations, takes from it all force which might come from the statement of his assessable property in Jacksonville." This is by no means a finding that the averment of the amount was colorable and for the purpose of committing fraud on the jurisdiction of the court. Nor is the Court's construction of the affidavit to the amended bill the correct one.

The amended bill (page 6) does not allege that the $50,000 of property subject to assessment for taxes in the City of Jacksonville, *is all the property* complainant owns within the city. The effect and substance of the allegation is that he owns property, real and personal, within the limits of the defendant city, to the amount in value of about $50,000, *which is subject to assessment for taxes.* And the affidavit states that all matters of fact set forth in the amended bill of complaint are true to the best of complainant's knowledge, information and belief; and then adds that it may be true, as a matter of law, *that some of the complainant's property within the limits of the City of Jacksonville may not be legally taxable by the said*

coul
$2,0
of b
to p
thirt
assu
oppo
over
rer t
sable
amen
motio
state a
denie
that c
$50,0
repeat,
on it.

Tl
in disp
to wit:
sought
nal bill
motion
plainan
contribu
the bon
about $5
The Cou
its opini
amended
the amou

city authorities. This affidavit was made so that the affidavit could not be used to estop the complainant from disputing the legality of any assessments made on his property within the city which was not subject to taxation. It was a prudent qualification, for the reason that the complainant might well apprehend that some of the city authorities would be irritated and vexed by reason of this suit, and in a spirit of vexation might undertake to oppress the complainant by assessing property which was not subject to assessment. The qualification in the affidavit is perfectly consistent with the averment in the bill that the complainant's *assessable property was of the value of $50,000*, and perfectly consistent with good faith. The laws of the State require all property to be assessed at its *full cash value.*

Act of Florida Legislature June 2d, 1893, reads: "All the lands shall be assessed * * * *at their full cash value.*" And section 16 provides that all personal property shall be assessed at its "*full cash value.*"

No affidavit to the amended bill was necessary, except for the purposes of a motion for temporary injunction and the qualification in the affidavit commented on by the Judge is not a qualification of a positive averment in the bill that the complainant is owner of $50,000 *worth of assessable property*, upon which averment the jurisdiction of the Court depended in view of the case which the court below took.

A court can never be justified in dismissing a bill on a motion for an interlocutory decree on a mere suspicion that the plaintiff cannot prove his case.

Second Point—The Court below, after holding that the complainant must establish that he had property within the city limits, upon which taxes would be levied during

the period of thirty years to an amount exceeding $2,000, proceeds to make a mathematical calculation that he would not have to contribute that amount on the basis of $14,000 as the value of complainant's taxable property (See Record, page 44), and reaches the conclusion that complainant would have to pay $1,884.60. We confess that we do not understand the Court's calculation. The interest on the bonds at 5 per cent. would amount to $50,000 a year. The taxable property of the city, real and personal is $13,000,000. It is safe to say that it would require an annual assessment of 4 mills to pay the interest on these bonds. This would be making only a trifling deduction on account of taxes not collectable. At the rate of 4 mills per annum complainant would have to contribute annually on the $14,000 worth of property $56 for interest. This, multiplied by 30 (the number of years the bonds would run), would make $1,680. Complainant's share of the principal that he would have to contribute would be represented by the fraction of a fourteen thousandth part of $13,000,000. On this basis complainant would have to contribute $1,077 to pay the sinking fund. This, added to the assessment for interest, would make $2,757. Neither this calculation nor the Court's calculation takes into consideration the value to complainant of the amount of taxes he would annually contribute. The legal rate of interest in Florida is 8 per cent., and consequently $56 which he contributes to pay the interest on the bonds would earn an interest annually of $2.48, which for twenty-nine years would amount to $71.92. It is apparent that interest at 8 per cent per annum on the amount which complainant must contribute each year to pay the interest alone on the $1,000,000 bonds would exceed $1,200, which, added to $2,757, makes $3,957.

There can be no deduction on the theory that the city, with the new issue of bonds, would take up an old issue of $200,000, because there was no certainty it would do it.

Third Point—Why the Court took $14,000 as the basis of its calculation, we do not understand. The affidavit of Verelst (pages 32 and 33 of the Record), put in evidence by the defendant city, admits that the real estate of which complainant is half owner is worth $28,000, and that his yacht is worth $3,000. As the law requires property to be assessed at its full cash value, this would make complainant's property subject to taxation, $17,000, without taking into account the liability of complainant to pay *all the taxes assessed on the real estate, instead of one-half.* An undivided half owner is certainly liable to the taxing power to pay all the taxes assessed and take the risk of collecting one-half of the taxes from the owner of the other undivided half, or have his property forfeited and sold for taxes. There certainly would be this liability, and it is a liability to contribute over $2,000 that is under discussion.

This amount of $1,700, on the theory of jurisdiction applied by the Court below, would far exceed $2,000. The complainant on motion for temporary injunction, had the right to rely upon the amount of property admitted by defendants in their affidavits, and we think he had the right to rely upon the *largest amount which defendant's affidavits established* he owned of taxable property, and was not called upon to introduce any affidavits to sustain his averment that his assessable property amounted to $50,000. The only risk that complainant run in this respect was that if the Court was not satisfied as to the jurisdictional amount, *the motion would be denied,* and then, when replication was filed, he could take testi-

mony in an orderly course of proceeding to establish that amount. In any event, the proof by defendants established that complainant had not made a colorable or fraudulent statement of fact for the purposes of jurisdiction; and that the complainant's assessable property far exceded the amount stated in the original bill.

Fourth Point—But we insist that the theory of the Court below as to jurisdiction is an erroneous one. We insist that the amount in dispute was the amount of invalid bonds sought to be enjoined and to be canceled, which was $1,000,000. The Court, in its opinion (page 41), refers to two cases: of Murphy vs. East Portland et al., 42 Fed. Rep., 38; and the case of Adams vs. Douglas Co., Vol. I, Federal Cases, pp. 106–112. In neither of these cases was there any averment of the *amount of taxable property owned by complainant.*

And we concede that Judge Deady in the first case, and Judge Delahay in the second case, did hold that the amount in dispute was the amount of taxes that complainant would have to pay. In the first of these cases, the question arose on demurrer to the bill. The demurrer was sustained, *but the bill was not dismissed.* In the second of these cases, the question arose on motion to dissolve the temporary injunction. The injunction was dissolved, *but the bill was not dismissed.* So, that assuming that the views of those judges as to amount in dispute was correct, no support is found in their opinions for a decree dismissing the bill on over-ruling the motion for temporary injunction. But the view of those judges is manifestly unsound. *The "matter in dispute" must be a matter in dispute before the suit is brought. The suit is brought to have that matter settled. In the case at bar the question in dispute was whether or not the city had authority to issue and sell $1,000,000 bonds. The suit was brought to settle that*

question. The validity or invalidity of the bonds was the question in dispute; and, if we can understand the opinion of this Court, it was so held in the case of

Brown vs. Trousdale, 138 U. S., 389, 394.

That was a suit by taxpayers to enjoin the issue of bonds to the amount of $400,000, by Muhlenburg County, Kentucky. On page 394 of the report of that case this court expressly says: "The main question at issue was the validity of the bonds. The amount in dispute, in view of the main controversy, far exceeds the limit upon our jurisdiction, and disposes of the objection of appellees in that regard."

And this Court expressly held that the rule applicable to plaintiffs seeking to enforce a distinct right exceeding $2,000, did not apply to a case of this character.

The learned Court below refers to this case in its opinion (Record, p. 43), and refuses to follow it on the ground that the *entire number of taxpayers in the county in that case*, were joined and considered as co-complainants in the suit, and that their interest was *exactly equal to the entire issue of bonds.* The report of the case does not show that all of the taxpayers of the county united in the suit, and the opinion of this Court expressly says:

"The interests of those *who did not join in*, or authorize the suit, were identical with the interests of the plaintiffs." And it does not appear from the report of that case, that one of the complainants, or all of them combined, would have to contribute over $2,000 in taxes to pay the bonds sought to be declared invalid and enjoined, although in that case the levy of the taxes had been made, and part of the relief sought was to enjoin the collection of taxes. The Court below cites the case of

Russell vs. Stansell, 105 U. S., 303,

in support of its opinion. In that case a decree had been recovered for over $71,000. The suit was not brought to cancel this decree, or enjoin its execution. The amount in dispute in that case, between the creditor who had recovered judgment and the taxpayers, was the amount of taxes severally charged against each of complainants to pay the decree, and is clearly distinguished from the case of Brown vs. Trousdale.

In the case of Crampton vs. Sabriski, 101 U. S., 601, this Court held that taxpayers had the right to maintain bill in equity to enjoin the collection of an illegal tax to pay bonds alleged to be illegal. It nowhere appears from the report of that case, that the complainants, one or all of them, would have to pay taxes exceeding $2,000. In that case there were *three complainants.* The amount of the bonds sought to be declared void was $225,720. They were issued by the County of Hudson, State of New Jersey. The inference is irresistible that the *three complainants*, citizens of that county, would have to pay much less than $2,000 to pay the interest and principal on so small an issue of bonds issued by the county of Hudson, for which all the taxpayers were liable.

This Court has also held in a suit for an injunction the *value of the object to be gained by the bill,* not the amount of the plaintiff's damages, is the test of jurisdiction.

M. & W. R. R. Co. vs. Ward, 2d Black, 485.

Market Company vs. Hauffman, 101 U. S., p. 112.

In the case of Hill vs. Glasgow R. R. Co. et al., 41st Federal Reporter, 510, His Honor Justice Jackson held that a holder of stock of a corporation worth less than

$1,000 could maintain a suit in equity to enjoin the Directors from misapplication of the corporate funds where the amount of such funds exceed $2,000.

See that case, pages 613, 614.

Also in the case of Whitman vs. Hubble, 30 Fed. Rep., page 81, Judge Wheeler held that in a suit to restrain the maintaining by defendant of an awning over a part of the street adjoining plaintiff's premises the matter in dispute is the value of the right to maintain the awning, and not the amount of damage done by it to the plaintiff.

Fifth Point—The Court erred in entering decree dismissing the bill without giving the complainant the right and opportunity to be heard, and to present evidence in support of the bill. It will be observed by the Record, and the opinion of the Court, *that the defendants did not, after the overruling of the motion for an injunction, move that the bill be dismissed. The Court dismissed the bill on its motion for want of jurisdictional amount.*

In the case of Hartogg vs. Memory, 116 U. S., 588, this Court held that when the Circuit Court on its own motion makes an inquiry into the jurisdiction of the Court when it has been lead to suspect, from any cause, that its jurisdiction has been imposed upon, that justice requires that the plaintiff have an opportunity to be heard upon the motion, and to meet it by proper evidence.

See that case, pages 591, 592.

It is apparent that on this motion complainant relied on the theory that the amount of the alleged invalid bonds was the amount in dispute, and the admissions by defendant, showing an interest over $2,000. Having held against complainant on both points opportunity should

have been afforded to furnish proof on the latter point.

In conclusion we say that the record shows the complainant brought his suit in good faith, and alleged that he had taxable property within the limits of the defendant city to the amount of $50,000. Issue has been taken on that averment by the answer and before replication was filed, and without opportunity to summons witnesses and take evidence to support this averment, the Court on an application for a temporary writ of injunction, on its own motion, has dismissed the bill; and this, too, after a motion to dismiss the bill because it did not state the requisite jurisdictional facts, had been overruled.

It is a familiar rule that if a complainant in a bill in equity avers facts which, if proven, will entitle him to relief at the final hearing, the Court has no power on denying a motion for injunction, to dismiss the bill. On a motion for temporary injunction complainant may fail in his proof. Obtaining ex parte evidence to support such a motion is one thing, but proof by the testimony of witnesses produced before the court or examiner on compulsory process is quite another thing. And we submit that the Court erred—

1st. In dismissing the bill upon the state of the record on its own motion, even conceding that the view of the Court was correct, that the complainant must establish that he would contribute over $2,000 in taxes to pay the bonds in question.

2d. On the ground that the amount in dispute was the amount of the invalid bonds sought to be enjoined and canceled, and not the amount of taxes which the complainant might be compelled to pay before maturity of the said bonds.

3d. On the ground that the answer of the defendant city and the affidavits introduced by it establish that complainant was liable to contribute, or be compelled to pay, over $2,000 in taxes, by the time said bonds matured. At least, the defendant's answer and its own affidavits do not conclusively show that complainant would contribute less than $2000 in taxes by the time the bonds matured.

H. BISBEE,
For Appellant.

157-368

157-368

Office Supreme Court U. S.
FILED.
MAR 11 1895
JAMES H. McKENNEY,
CLERK.

C

SUPREME COURT UNITED STATES.

JOHN H. COLVIN,
APPELLANT,
vs.
CITY OF JACKSONVILLE, ET AL
APPELLEES.

OCTOBER TERM,
1894.
No. 874.

BRIEF FOR APPELLEES.

A. W. COCKRELL,
For Appellees.

THE DA COSTA PRINTING HOUSE, JACKSONVILLE, FLA.

(15,758.)

Supreme Court of the United States.

OCTOBER TERM 1894.

No. 874.

JOHN H. COLVIN, APPELLANT,

vs.

THE CITY OF JACKSONVILLE AND D. U. FLETCHER, AS MAYOR THEREOF.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR APPELLEES,

By A. W. COCKRELL.

STATEMENT.

The appellant exhibited his original bill against the defendants, March 3rd, 1894, alleging that he is a citizen of Illinois, setting up that the defendant city had authorized and provided for the issuance of, and had advertised for bids for, and was then negotiating the sale of, city bonds of the par value of one million of dollars, denying the existence of legal authority therefor, upon various grounds alleged, and praying that the city be "enjoined and restrained from issuing, selling and delivering pledging or otherwise disposing" of said bonds. A temporary writ of injunction, "as hereinbefore prayed," was also prayed.

In this original bill, it was alleged, page 1 of the record, that complainant "is the owner of property real and personal, situate and being within the corporate

limits of the City of Jacksonville, and that said property is subject to taxation by said city"; and "that your orator's said property" "to the amount in value of about ten thousand dollars is subject to asssessment for taxes to raise revenue with which to pay the interest on said bonds and to provide a sinking fund for the payment of the principal of said bonds; and that, if said bonds are issued, your orator's said property will be assessed and taxed as aforesaid." The bill was sworn to, page 5 of the record. An answer on oath on the part of the defendants was waived.

May 21, 1894, see pages 5 to 11 of the record, the complainant put upon the files his amended bill setting up "And that your orators said property within the city limits of the said City of Jacksonville to the amount in value of about fifty thousand dollars is subject to assessment for taxes to raise revenue with which to pay the interest on said bonds, and to provide a sinking fund for the payment of the principal of said bonds; and that, if the said bonds are issued, your orator's said property will be assessed as aforesaid." The amended bill also averred. "And that the total assessed valuation of the property real and personal within the limits of the said city was for the year 1893, $13,011,290, of which the real estate was $10,654,950 and the personal was $2,356,340."

To this amended bill complainant swore as follows: "That all the matters of fact set forth in the amended bill of complaint filed in the above entitled cause are true to the best of his knowledge, informa ion and belief, except that it may be true as matter of law that some of the deponent's property within the limits of the City of Jacksonville may not be legally taxable by the said city authorities, but that this deponent says that the taxes assessable and that will be assessed upon his property within the limits of the said city, to pay the interest on the bonds mentioned in the bill and to accumlate a sinking fund to pay the principal, will amount to much more than $2,000.00 before the maturity of the bonds." See pages 23, 24 of the record.

May 22, 1894, the defendants moved the court to dismiss the amended bill of complaint, setting up the same grounds upon which the original bill was prayed to be dismissed. Page 11 of record. May 24, 1894, this motion was over ruled by "Charles Swayne, Judge." Page 12 of record.

Thereupon the defendants filed joint and several answers to, the amended bill, duly sworn to, setting up that complainant is not a citizen of the State of Illinois, of the City of Chicago, County of Cook, as set up in said bill; but averring, on the contrary, as of their own knowledge, the fact to be that the domicile, abode, and actual residence of the complainant is now, and has been for three years and more at and before the filing of the bill in this cause, in the County of Duval, Florida, south of the St. Johns river, outside and beyond the city limits of the City of Jacksonville in said County, situate about one mile from the limits of said city.

Further answering said bill, the defendants averred "that they have made diligent inquiry, and have caused thorough investigation to be made by the Comptroller of of the City of Jacksonville, who is ex officio tax assessor of said city, and by the Florida Abstract and Title Security Company, a corporation organized for the purpose and engaged in the business of furnishing information as to matters appearing upon the public records of Duval County, and by the Clerk of the Circuit Court of Duval County, to ascertain what property, real and personal, is owned by the complainant, John H. Colvin; and subject to taxation by the City of Jacksonuille or the authorized officers thereof, and thereupon, these defendants say that the only real and personal property owned by said complainant within said city or subject to taxation is an undivided one half interest in Water Lot 11, according to Hart's map of the City of Jacksonville", that said lot was conveyed by the owner thereof, May 25, 1893 to one Coachman, subject to the liens of mortgages aggregating $17,000 and of the taxes due the city for the years

1891 and 1892, and taxes due the state and county for the year 1892, in consideration of the sum of $5,000; that the second day thereafter, and before the recording of said deed, the said Coachman, in consideration of five thousand dollars paid to him by complainant, conveyed to complainant one half of the interest of said Coachman; that complainant is described in said deed as being of the County of Duval, State of Florida; that said Coachman and Colvin each own an undivided half interest in said lot subject to said liens; that said Water Lot 11 is assessed upon the assessment rolls of the said city, at a valuation of $24,000; that said complainant has never owned any other real estate within the limits of said city or subject to taxation by said city; that he never has been a resident tax payer of said city; has never made return to the tax assessor of said city of any personal property assessable for taxation, as required by law; that no taxes have ever been in fact assessed against complainant by the said city, except that for the year 1893 there was assessed against him the sum of $17.94, taxes upon a pleasure yacht assessed at a valuation of $1,300 and owned by him, which yacht plies upon the St. Johns river; and ties up sometimes within and sometimes without the limits of the city; that these defendants do not know whether said yacht is taxable by said city; that said complainant had never paid the tax as assessed, although the taxes for that year have long since been due and payable, nor ever paid any tax whatever to the said city; and that he does not own any personal property other than said yacht, subject to taxation by the defendant city.

The defendants further answering averred that the actual cash value of all the real and personal property within the city subject to taxation by the city is more than twenty million dollars, ($20,000,000.00).

The defendants further answering say that in the year 1873, the then City of Jacksonville issued bonds, bearing 8 per cent., of which $200,000 are now outstanding, a bur-

den and lien upon said Water Lot 11, and other taxable property, situated within the limits of the city as then defined, and as it existed prior to 1887; that the city had out grown the water works and sewerage system provided for by the proceeds of the bonds then issued; set up the necessities of the city as it now exists; the expenditures required to meet them; the response in legislative acts to these necessities; the submission of the question of the issuance of bonds to provide the requisite means; the nearly unanimous wish of the voters exhibited in the vote, for bonds; that the purpose of the issue of 5 per cent. bonds as defined in the legislation sought to be enjoined, distributing the burden for paying them over the whole property of the city as now enlarged, in part is to retire the said outstanding 8 per cent. bonds, now a burden upon $7,992,-990,00 of property situated in the old city limits, embracing said Lot 11, according to the actual assessed valuation thereof; that the issuance of the bonds, sought to be enjoined, thus retiring such outstanding bonds, would increase the bonded indebtedness not exceeding $800,-000.00; that all the bonded indebtedness will then bear interest at 5 per cent.; that the payment of the 8 per cent. interest on the bonds now outstanding requires the levying annually of taxes to the amount of $16,000.00; whereas the total amount required to be met by taxation to pay 5 per cent. interest upon the whole issue of $1,000,000.00 will be $50,000.00, only $34,000.00 more than is now necessary to pay the 8 per cent. bonded indebtedness now existing; and the defendants also aver that the increased sources of revenue opened to the city by the contemplated improvements, and the savings of expenditures by way of rent, etc., made necessary by their absence, will more than offset this increased interest.

The defendants affirm the authority of the city to issue the bonds, and the validity of the legislation and ordinances, and the regularity and fairness of the election upon

the question of bonds; and deny in detail the specific allegations upon which the equities of the bill are predicated. See answer, page 12-22 of the record.

The complainant, on June 6, 1894, filed exceptions to this answer. See page 23 of the record.

Pending these exceptions, the complainant filed the following motion, see page 25 of the record:

"Now comes the complainant and moves the court for a writ of injunction and the appointment of a receiver as prayed for in the amended bill of complaint in this cause and in the amendments thereto filed by leave of court."

"And the defendant will please take notice that this motion will be made at 10 o'clock a. m. on the 29th day of October, 1804, before the Hon. James W. Locke, judge of the said court, at chambers, in the City of Jacksonville, or at such other place as he may direct, or as soon thereafter as the motion can be heard, and this motion is made upon the grounds set forth in the amended bill of complaint and the amendments thereto filed by leave of court and written documents and affidavits in support of the averments in the bill, and upon the answer of the said city and exhibits thereto." "Defendants will also take notice that the amendments to the said original bill attached to this motion will be filed at the same time of hearing of the motion if the leave of the said judge to file the same is given."

This motion having been heard, and the court having orally announced its conclusion thereon, the complainant filed a motion asking leave to "amend his bill by joining with him in said bill the names of other owners of property assessable by the said city, so that the joint interest of such owners and complainant would exceed the sum of two thousand dollars." Page 36-37 of the record.

And the court thereupon rendered the following decree, page 37 of the record:

"This cause having come on for a hearing in vacation upon motion for an injunction and the appointment of a receiver upon the bill, amended bill, answer, and affidavits, and having been fully heard and considered and said injunction denied, and upon further motion to set aside the said order denying said injunction, having been made in term and been fully heard and considered, and motion having been made by complainant that he have leave to amend his bill by joining other parties, upon due consideration it is hereby ordered that said motion to amend by bringing new parties be denied and the bill dismissed for want of jurisdiction."

The appellant prayed an appeal to this court, and assigns the following errors, page 38 of the record:

1st. The court erred in entering a decree dismissing the amended bill of complaint on the ground that the case was not at issue; that the amended bill of complaint stated a case within the jurisdiction of the court, and complainant has never had an opportunity of proving the jurisdictional facts alleged in the amended bill, and in the state of the record was not required to prove such jurisdictional facts until the case was at issue and an examiner or master appointed to take testimony.

2nd. The court erred in entering a decree dismissing the bill without giving the complainant the right and opportunity to be heard upon the power of the court to dismiss the bill in the present state of the record.

ARGUMENT.

I. The point of jurisdiction; by whom and how, and at what stage of the record raised.

The presence or absence of jurisdiction, tested by the case as made by a complainant demanding the adjudication of a matter in controversy in a court of limited jurisdiction, confronts such court *in limine*, and attends it in each and every step taken by it, in the assertion of jurisdiction; and, in the nature of things, no more imperative duty rests upon such a court than to surcease jurisdiction *mero motu* when it appears that it has no jurisdiction. In determining this *paramount* question, the good faith of the complainant, in bringing the suit, does not enter; nor is it important that the court had heretofore overruled a motion of the defendant to dismiss the bill; nor is it of consequence that the action of the court in overruling the motion to dismiss is set aside, and the bill is dismissed by the court, *mero motu*, without giving complainant an opportunity to establish by evidence the case, made by his bill, thus adjudged not to be a case with the cognizance of the court

17

Grace vs. A. C. Ins. Co., 109 U. S. page 278.

Bors vs. Preston, 111 U. S. page 255.

Nor is it of consequence, after "the court orally announced its decision that the court denied the motion for injunction, and would dismiss the amended bill of complaint," that "thereupon complainant filed a motion and asked leave to amend his bill by joining with him in said bill the names of other owners of property assessable by

the said city, so that the joint interest of such owners and complainant would exceed the sum of $2,000.00," even, though, "this was for the purpose of removing the objection to the jurisdiction of the Court that the amount involved in dispute did not exceed the sum of $2,000.00," as stated on page 5 of appellant's brief, and as shown on pages 36 and 37 of the record. Nor is the introduction into this record of this motion and the recitals thereof, of any value in the determination of the *sole* question before this Court, except as a concession by the complainant, solemnly entered of record, that in order to make a case of jurisdiction it was necessary to "join with complainant in such bill the names of other owners of property assessable by the said city, *so that the joint interest of such owners and* complainant will exceed the sum of $2,000.00, and so that the bill will read, in behalf of the other taxable inhabitants of the said city."

The original bill, para. 3rd, (record p. 1), and the amended bill, para. 3rd, (record p. 6), aver "that the said City of Jacksonville is endeavoring to negotiate the sale of the said bonds of the said city of the par value of $1,000,000, and has advertised for bids for said bonds, and that the said City of Jacksonville through its officers is now engaged in an effort to negotiate the sale of said bonds;" and the prayer of each is for a temporary, as well as a permanent injunction of the defendant from issuing, selling and delivering, pledging or otherwise disposing of said bonds, as necessary to the relief sought.

Pending his exceptions to the answer, the complainant "moves the court for a writ of injunction and the appointment of a receiver as prayed for in the amended bill of complaint in this cause and in the amendments thereto filed by leave of court;" designates the 29th day of October, 1894, as the time for hearing the motion, and sets up, "that this motion is made upon the grounds set fourth in the amended bill of complaint, and the amendments thereto filed by leave of

court, and written documents and affidavits in support of the averments of the bill, and upon the answer of said city and the exhibits thereto."

It thus appears, this last motion, upon the hearing of which the court dismissed the bill, was not only for a writ of injunction, as prayed, but also for a receiver with power and authority to take possession of said bonds and with power to take all necessary judicial action to recover possession of the said bonds wherever they may be found, or that said city be ordered and directed to deliver the said bonds into the registry of the court.

And this motion was predicated not only upon the complainant's amended bill of complaint, and the amendments thereto and the written documents and affidavits in support of the bill; but *also* upon the *answer* of said city and exhibits thereto.

The judicial action thus invoked, upon the submission thus made, required an adjudication, upon the pleadings, of the controversy, whether or not the complainant has a *locus standi* in the court, decided against the complainant below, and sought to be reviewed here.

The court was *required* by this motion to stay or lay the heavy hand of injunction as prayed; it could not grant the motion without adjudicating, upon the pleadings, upon which the motion was submitted, that the complainant had a *locus standi* in the court to enjoin these bonds.

Indeed, the first and vital proposition in the solution of this question, was this *status* of the complainant. At his instance, upon this motion, and upon this submission, this status was adjudicated. Having thus forced the adjudication that he had *no* status, of necessity involving the dismissal of his bill, he *now* complains, first point in his argument, page 7 of his brief, "the court treated the cause as if

it had been set for hearing on bill and answer, or for a final hearing on evidence taken."

The controversy, the only cause disposed of by the court below—the controversy, the only cause reviewable by this court, as that controversy was made in the court below, was as to the *locus standi* of the complainant; and that controversy was submitted and adjudicated, on bill and answer, on the motion of complainant.

This must be so: unless, indeed, the motion for injunction as prayed was so contrived or urged as to require the court either to ignore, in its judicial action, the question whether or not the complainant had any standing in court for the relief prayed; or to judicially act on the motion, if upon the pleadings and evidence submitted, it ascertained the complainant had a *locus standi*, and to *withhold* action, if the Court ascertained upon the same pleading and evidence, he had no such *locus standi*.

It was "a very flagrant error," page 7 of his brief, in the view of complainant's counsel, regarding as he does this motion, thus submitted, as one to be acted on *only* in the event the court ascertained the complainant had a locus standi, for the court, thus invoked by him to grant an injunction *"as prayed,"* "upon the *grounds" thus set forth*, to decide that it had no jurisdiction to do anything except to dismiss the bill; which it proceeded to do.

Says counsel, page 7 of his brief, "the court fell into the error of assuming the complainant was bound to prove on motion for temporary injunction," meaning thereby the motion that was in fact made upon the hearing of which the court dismissed the bill, "all jurisdictional facts as if the case was on final hearing, and that complainant had no right to have the exceptions to the answer disposed of, file replication, and to take testimony in the usual mode to establish the averments of this bill." But what right

had complainant, in respect of these matters, until his status as a suitor had been made clear to the court?

Undoubtedly, the complainant was under no obligation, if the purposes of his bill could be accomplished without it, which is denied, to move the court for the *temporary* injunction, which he says, and which is denied, he in fact moved for; but that he did in fact move for judicial action upon his motion, thus made; that his motion was in fact, as it recites, based *upon* the bill and amendments and the written documents and affidavits in support of the averments of the bill, *and upon* the answer of the said city and the exhibits thereto, irrespective of the exceptions thereto, can not be controverted upon this record. Nor can it be denied that this motion was such a motion as required the court to determine upon the bill and answer and written documents and affidavits filed in support of the averments of the bill, whether or not it had jurisdiction to grant the "writ of injunction and the appointment of a rereceiver as prayed for in the amended bill of complaint in this cause and in the amendments thereto filed"; nor can it be denied that the court was *thus* required to determine *this* question, tested by its allegations and prayer, the *main* object of the bill at *this* particular stage of the case, *thus* made upon this motion, upon the bill, answer and the written documents and affidavits in support of the averments of the bill.

Recurring to the prayer of the amended bill, page 11 of the record, it will be seen that the prayer for a temporary writ of injunction was for injunction and restraint, "as hereinbefore prayed," that is for injunction and restraint as prayed in the prayer for permanent injunction and restraint. Hence, no temporary restraint and injunction could have been granted, except such as upon final hearing could have been made perpetual under the prayer for permanent relief. The exercise of the same judicial power was required for

the granting of the *temporary*, as for the permanent injunction; and the court was under the same judicial necessity to determine, before granting or refusing the injunction, the existence of its jurisdiction.

In view, then, of the nature, scope and object of this motion; the grounds upon which it was based; the pleadings, as well the defendants' as the complainants', in terms brought by the complainant to its support; and the issues involved in judicial action upon it, thus invoked by complainant, at this "present stage of the record"; the reasoning of the court, upon which the bill was dismissed, is conclusive.

Says the court, page 44 of the record: "The issue upon this question was plainly made by the allegations of the answer that denied that complainant had an interest sufficient to give the court jurisdiction. It was peculiarly within complainant's power to show affirmatively that he had such interest, but after every opportunity was given him, the answer having been filed several months and he had filed affidavits upon other points, but none upon this, the case was called for a hearing upon his motion for the granting of an injunction and appointment of a receiver upon the amended bill, answer, and affidavits, with no asking or opportunity for ruling upon the exceptions to the answer then pending. A full hearing, occupying nearly three entire days, was had, the numerous affidavits were introduced and read without objection, and no desire was expressed to introduce further proof upon the questian of jurisdiction or motion to amend was made until after the announcement of the decision of the court and until upon motion of the complainant the matter had been again taken under consideration and, finally, the former decision affirmed."

Bill Does Not Show Jurisdiction.

II. Apart from the answer and exhibits and affidavits introduced on the hearing of the motion to dismiss, the bill, *on its face*, discloses the want of jurisdiction.

The rule is, the facts upon which the extraordinary process of injunction can rightfully be predicated must appear in the bill and must be sworn to.

1 Dan'l. Chan. 395.

1 Foster Fed. Prac., Sec. 252.

Concede the amended bill does show, upon its face, the diverse citizenship required as the basis of jurisdiction does it show the complainant has taxable property, subject to taxation, accessible to the tax officials of the defendant city, of the value of $50,000.00, or such other value, as to make the matter in dispute as to him, that is the sum he would have to pay in discharge of the indebtedness incurred by the bonds sought to be enjoined, exceed the sum of two thousand dollars?

It is submitted the bill fails to do this; and was therefore properly dismissed.

What are the principles of law controlling this question, as to the amount required to give jurisdiction.

We insist these are clear beyond disputation.

"Where the land within a particular district was assessed for taxation, each owner being liable only for the amount wherewith he was separately charged, and the bill of complaint, filed by a number of them, praying for an in-

junction was dismissed, and they appealed.—Held, that the several amounts cannot be united to make up the sum necessary to give the court jurisdiction."

Russell vs. Stansell, 105 U. S. 303.

In the suit by a tax payer to enjoin the passage of an ordinance creating an indebtedness against the town on account of its alleged illegality, the matter in dispute is the sum of the taxes which the plaintiff would probably have to pay in discharge of said indebtedness; and it must appear with reasonable certainty from the facts stated in the bill that such taxes exceed in value the sum of $2,000.

Murphy vs. E. Portland, 42 Feb. Rep. 308.

A circuit court cannot take jurisdiction on the ground of diverse citizenship of suits by a non-resident tax payer to enjoin county officers from issuing county bonds, and from levying a tax to pay the coupons thereof, unless the bill shows that the tax to be paid by complainant, or his liability, determined by the ratio of his taxable property to all the taxable property in the county, exceeds $500 (now $2,000).

Adams vs. Douglas County, 1 Fed. Cases, 106.

The criterion of jurisdiction in the U. S. Circuit Court when asked to restrain the collection of a tax is the amount of the tax in dispute must as to complainant exceed the sum of $500 ($2,000).—Citing Adams vs. Douglass County.

2 Fed. Rep. 839 and 842.

What is the value of the taxable property of the complainant within the reach of the taxing power of the city of Jacksonville?

This question involves *two* distinct inquiries; the existence, character and location of property, *whatever* may be its form, is a question of fact, to which the owner may and

should swear, absolutely and of his own knowledge. And the burden is upon him, both and alike, as a matter of pleading and proof, to plead and prove *facts*, which make a case within the jurisdiction of the court.

The *situs for taxation* of property is a question of law, pure and simple, its existence, character and location being shown as matter of fact. Whether or not, therefore, the complainant has *any* property subject to taxation by the city, depends upon its existence, character and location.

Has the complainant by his bill averred the existence, character or location of a single item of property, of which he is the owner, from which, this Court may determine that such property exists in him, and that as matter of law, it has such a situs for taxation, as to bring it within the reach of the taxing power of the city?

We insist the burden is upon him not only to aver that he owns property the existence, character and location of which, impress upon it such a situs for taxation, as brings it within the reach of the taxing power of the city, but also that the value of such property as owned by him, and so impressed with a "situs" for taxation, is large enough to make, as to him, the matter in dispute, in this controversy exceed the sum of Two Thousand Dollars.

We submit there is not a single allegation of fact, presented by the bill in this case, from which, the Court can as matter of law determine the complainant is the owner of any property whatever, having such a situs for taxation, as brings it within the taxing power of the city.

Certainly this Court can not in the absence of an averment setting up the existence, character and location of specific property, claimed by the complainant to be his, determine, as a matter of law, whether such property, or any item thereof, has a situs for taxation, within the reach of the tax-gatherer of the city.

Certainly, the officials of the city can not assess for taxation, the property of the complainant, if he has any, without scheduling or listing it, item by item, and so describing, characterizing and locating it, as to show it, and each item or part thereof, has such a situs for taxation, as to bring it within the reach of a lawful assessment by them; and also as to show its value, item by item, for taxation purposes. Without a compliance with these requisites, the levy and assessment would be, for *that* reason, void.

Can a complainant, upon whom the burden rests of establishing his liabilities, under the law, as a tax-payer, to such an amount, as gives him a *locus standi* in the federal court, be excused from averring specific facts, which if they exist, are absolutely within his own knowledge, and which the city, presumably a stranger to this knowledge, must specify, list, schedule, describe, characterize, locate and value, before it can render him or his property liable to any, the slightest tax whatever?

Surely the complainant must show by his bill, by traversable allegations, *where* is the property and *what* is its character, claimed to be owned by him, before he acquires rights, by injunction or otherwise, legally predicable *alone* upon its situs for taxation, and its taxable value, if it has a situs, necessary to municipal taxation.

Wholly pretermitting the argument based npon the absence of any allegations whatever of facts, from which as a matter of law the Court may determine whether the complainant has property upon which the law impresses a situs for taxation by the City of Jacksonville, we now invite the attention of the Court to the varying humors of ownership, and estimates of value, of the complainant, controlling his conclusions of law, as set up in his original bill, and

amended bills, as to the situs for taxation of property, and its value.

Recurring to the second paragraph of the original bill filed May 3, 1894, we find this averment: "And that your orator's said property within the city limits of the said City of Jacksonville, to the amount in value of about ten thousand dollars, is subject to assessment." The bill is sought to be verified by the affidavit of the complainant, that the allegations thereof are true to the best of his information and belief. Within a short time thereafter the allegation above copied is amended, and as amended sworn to with equal fervor, so as to recite the value to be about fifty thousand dollars. There is no explanation, or pretense of explanation, that the affiant was by inadvertence or otherwise misled into making the affidavit that his said property so subject to taxation was about the value of ten thousand dollars; nor does it appear that he had in fact property within the city limits that did not enter into the said alleged valuation of about ten thousand dollars; nor does it appear that he was in fact ignorant of its value when the original affidavit was made; nor that he was ignorant of or had forgotten at the time, the existence of other property owned by him within the city limits, subject to taxation; but the bald allegation is made that the property owned by him, and which he swore was worth about $10,000, was in fact worth five times that sum. And this new affidavit is unaccompanied by any explanation, or any schedule or list, or valuation, other than a lump valuation, sustaining this five fold increased sum.

Good faith, fair dealing with the court, upon this matter of vital consequence to its jurisdiction, imperatively demanded an explanation. The subject matter, location and character of property, which can thus appreciate, in so short a time, from a sworn valuation of about ten thousand dollars to a sworn valuation of about fifty thous-

and dollars, made by identically the same affiant, should be made known to the court.

The rule laid down by Daniell, recognized every where not only as a rule of law but sound morality as well is that the amendments made to a sworn bill must be consistent with the original bill, and should be accompanied by affidavits showing how the mistake occurred.

1 Daniell Chan. Prac. 424, note 1.

The rule is elsewhere stated, that the plaintiff in making amendment to a sworn bill must not only swear to the truth of the proposed amendment, but also "render a valid excuse for not incorporating it in the original bill."

1 Daniell Chan. Prac. 401, note 8.

It may be if the property so alleged to be the property of the complainant and so alleged to amount in value to about fifty thousand dollars were identified by its subject matter, character and location, the defendant could show that it or some of it is not complainant's property, or if it his property, is not subject to taxation by the city, or if subject to taxation, that its value for taxation was about what complainant himself alleged and swore it was when he filed his bill praying the court for an injunction.

In Murphy vs. East Portland, 42 Fed. Rep. 308, and Woodman vs. Ely, 2 Fed. Rep. 839, in which taxes were sought to be enjoined, the complainant set up in his bill the property he claimed to be owned by him and subject to taxation, describing it, so as to identify it by metes and bounds; and thus put in issue its ownership, its liability to taxation and its value; and thus enabled the court to determine from these allegations whether the matter in dispute exceeded, as affecting the plaintiff, the sum of two thousand dollars; and thus to adjudge whether the plaintiff as an individual, had such an interest

in the object of the litigation, other, as declared in Adams vs. Douglass County, 1 Fed. cases 106, than that which belonged to the whole community, "which entitled him to arrest the onward progress of great public concerns."

The Court will bear in mind, the complainant does not aver or claim that he has been heretofore or is now assessed upon property liable to taxation of the value of $50,000.00. His averment, made only on information and belief, is that he has property, real and personal, liable to taxation by the city, to that amount in value. Can it be that a complainant is allowed in a court of equity to "arrest the onward march of great public concerns" entrusted to the city, upon the pretext that he has $50,000.00 worth of property liable to taxation, and withhold from the court and the city such definite knowledge of the location and character of that property, as will enable the city to reach it for taxation? In a word, will this Court permit a complainant to make such an indefinite claim to property as will enable him to defeat the entire scheme of raising revenue for sanitation purposes, and yet shield from taxation that ownership, never heretofore, or now, subjected to taxation.

It does not appear what personal property the complainant owns subject to taxation by the city. He asserts he is a non-resident. But the personal property of a non-resident is not taxable as such, unless it is employed in business in the taxing district, or has otherwise acquired a fixed *situs* therein.

Cooley on Taxation (2 Ed.) 21.

Indeed, all those against whom the taxing power has no jurisdiction to impose a personal charge are deemed to be non-residents.

Dow vs. Sudbury, 5 Met. (Mass.) 73.

In the taxation of personal property, two inconsistent doctrines often come into conflict; the one, *mobilia sequuntur personam*, demanding that the property shall be taxed at the owner's domicile, on the theory that personalty has no other *situs*; the other that it shall be taxed like real property, where it is situated. Ordinarily the first rule will prevail, and, as a general rule, personal property is taxable at the domicile of the owner.

Cooley on Taxation (2 Ed.) pp. 56, 372.

"An Undivided Half Owner" Not Liable as Claimed.

Counsel for appellant, see his brief page 12, in order to spell out the amount required to give jurisdiction, insists that "an undivided half owner" of a lot is liable to the taxing power to pay all the taxes on the lot, if the other "half owner" should be remiss.

It is not alleged in the bill that he owned an undivided half interest in this specific lot; nor the whole or any interest whatever in any specific real or personal property in the city; nor is it alleged that he has at any time paid any taxes to the city; nor that he has, in fact, been assessed by the city for taxation; nor that he, as a tax-payer, has made any returns to the city assessor, or another, for taxation by the city.

The legislation bearing on this subject is found in chapter 4300, act of the legislature approved June 2, 1893, and is as follows:

"Section 1. All property which is subject to state taxes shall be assessed and listed alphabetically for the entire city, in the name of the owner whenever the name of such owner is known to the assessing officer, or when the property has been returned as herein provided. Property, the owners of which are unknown and have failed to return,

as herein provided, shall be assessed and listed according to lots and blocks of the several tracts or plats of land within the city," etc.

Sec. 2. All persons, corporations or firms owning property, whether real or personal, subject to taxation by the City of Jacksonville, are hereby required to make return of the same before the first day of August, 1893, and before the first day of March, in every year thereafter, to the comptroller of said city."

It is clear, therefore, if the complainant did his duty, *his return* would have shown a liability to taxation to him *as owner* of an undivided half interest in this lot *and no more*, which liability could have been discharged by payment thereof before the sale.

People vs. Treasurer of Detroit, 8 Mich. 14.

Indeed, his return would have disclosed to the city, and to the court below, through this return, every particle of property owned by him subject to the taxing power of the city. Had he made the return, the law required him to make, that is, a *true return*, such a return would have so measured his liability to the city, as to have relieved him of the necessity of qualifying his verification of the amended bill, and subjecting his counsel to the necessity of explaining "this affidavit was so made so that the affidavit could not be used to stop the complainant from disputing the legality of any assessments made on his property within the city which was not subject to taxation." Page 10. appellant's brief.

The assessment so actually made on such a return furnishes, when compared with the aggregate assessment so actually made upon the whole property assessed by the city, the proportion of liability imposed upon the complainand by this issue of bonds.

The actual or supposed value of his taxable property, contrasted with the *actual assessed valuation* of property, subject to taxation by the city, does not furnish data upon which to determine the liability put upon complainant by this issuance of bonds. So, the allegations of the bill do not furnish the data, by which it affirmatively appears that it makes a case within the cognizance of the court.

Assuming the appeal presents the sole question of jurisdiction, the theory of the appellant that "the value of the object to be gained by the bill," irrespective of the amount of complainant's concern in the litigation, whether of interest or damages, is the test of jurisdiction, is untenable. The cases cited by appellant do not sustain it.

The recognition and application of such a theory would authorize *any* person, possessing the requisite diversity of citizenship, to implead the City of Jacksonville in a suit in the U. S. Circuit Court to have tested its power to construct projected public improvements; and as such improvements involve the outlay of money, usually provided for by the issuance of negotiable bonds, to embarrass and cripple and obstruct the city in the construction of such improvements however necessary that may be to the convenience, prosperity and health of its inhabitants; and this power of obstruction, under this theory, is wholly independent of the concern, whether of interest or damage, the complainant may have in the object sought by the litigation.

In El Paso Water Co., vs. City of El Paso, 152 U. S. 157, the court uses this language: "The bill is filed by the plaintiff to protect its interest and to prevent damage to itself. It must therefore affirmatively appear that the acts charged against the city, and sought to be enjoined, would result in its damage to an amount in excess of $5,000.

Supreme Court Jurisdiction Not Legally Invoked.

III. Has the Supreme Court any jurisdiction on this record and this appeal to entertain the matters assigned as error?

The appellant insists in his brief, page 5, "the merits of the case are not involved in this appeal." Whatever jurisdiction exists in this Court, to entertain the errors assigned, is found in the Act of March 3, 1891, Ch. 517, Sec. 55.

This legislation allows appeals, in any case, from the circuit courts direct to the Supreme Court, in which the jurisdiction of the court is in issue; in such cases the question of jurisdiction *alone* shall be certified to the Supreme Court.

In this record, there is no certificate of the court certifying any question of jurisdiction; nor is there a certificate certifying the record showing a question of jurisdiction; nor was a certificate of any kind, formal or otherwise, applied for.

The record, page 37, shows an appeal was prayed and "that a transcript of the record and proceedings and papers upon which the said order was made"—that is, the said decree dismissing said cause—"duly authenticated, may be sent to the Supreme Court of the United States."

Upon this application, "it was ordered that the said appeal be allowed as prayed for."

But the record is not even certified in the usual way.

It appears from the clerk's certificate that the foregoing pages, numbered from one to eighty, inclusive, constitutes a true copy of the proceeding, and a correct transcript

of the record, of the judgment in the above entitled cause *as prepared or directed by complainant's solicitors.*"

And so it is, the solicitor of the appellant and not the court directs or certifies the record to be transmitted to this Court.

Carey vs. Houston & T. C. R. Co., 150 U. S., 170.

The question of jurisdiction, alone, under the Statute may be certified to this Court for its supervision.

But this Court is invoked by the assignments of error, to determine nothing other than,

1. Whether or not the court erred in dismissing complainant's bill on a motion for a temporary injunction; and,

2. Whether or not the court erred in dismissing the bill without giving the complainant the right or opportu- to be heard upon the power of the court to dismiss in the then present state of the record.

If the Supreme Court has jurisdiction under the legislation, by force of which this appeal is brought, to entertain the errors assigned, no reason is perceived why the denial of the motion to amend, in the decree dismissing the bill, may not also be assigned as error. The errors assigned are certainly not more closely related to the "*sole*" question of jurisdiction than the denial of the right of the complainant by amendment to state a case of jurisdiction.

A. W. Coe Jr.,
Attorney for Appellees.

157-368

157-368

Office Supreme Court U. S.
FILED.
MAR 11 1895
JAMES H. McKENNEY,
CLERK.

UNITED STATES SUPREME COURT.

JOHN H. COLVIN,
APPELLANT,
vs.
CITY OF JACKSONVILLE, ET AL
APPELLEES.

OCTOBER TERM,
1894.
No. 874.

Appeal from United States Circuit Court,
Southern District of Florida.

BRIEF FOR APPELLEES.

JOHN C. COOPER,
of Counsel.
for appellees

THE DA COSTA PRINTING HOUSE, JACKSONVILLE, FLA.

In the United States Supreme Court.

JOHN H. COLVIN, APPELLANT.

vs.

THE CITY OF JACKSONVILLE, ET AL., APPELLEES.

BRIEF FOR APPELEES.

STATEMENT OF THE CASE.

This was a bill filed by the complainant in the United States Circuit Court for the Northern District of Florida, against the City of Jacksonville, Florida, and its officers, to enjoin and restrain the defendants from issuing, selling, delivering, pledging or otherwise disposing of a certain issue of bonds, to the amount of $1,000,000. The grounds on which the bill and amended bill sought to have the City of Jacksonville enjoined from selling said bonds were in effect that certain acts of the Legislature of the State of Florida, referred to in said bill, excluded persons from voting at the election for said bonds who possessed all the requisite qualifications of electors at the State elections under the Constitution of the State of Florida, all of which contentions

had been distinctly over-ruled by the Supreme Court of Florida in construing the act of May 15th, 1893, referred to in the bill and amended bill.

State ex rel. vs Dillon, 31 Fla. 545.

Various grounds are stated in the bill and amended bill attacking the legislation of the State of Florida, under which these bonds were issued. But nowhere in the bill or amended bill is it stated that the legislation is repugnant to the Constitution of the United States, nor are any facts whatsoever stated on which to found such a contention. The amended bill, (page 7, printed record) contains an allegation in general terms that subsequent to the date of the election authorizing the issue of these bonds, ordinances were passed providing for the payment of the interest and principal of the bonds in gold coin. The answer of the City of Jacksonville and others (pages, 12–22, printed record) sets forth fully the objects of the issue of the bonds. It shows the important public ~~improvements~~ for which the bonds were issued, among which was to retire a former issue of bonds, amounting to about $200,000, bearing 8 per cent. interest, while the new issue will bear only 5 per cent. interest. The answer fully denied all the charges of the bill and amended bill in reference to the issue of said bonds, and such action of the City thereunder as was attacked in said bill. The answer denied that the complainant was a citizen of the State of Illinois, and averred that the permanent residence of the complainant was in the County of Duval, a short distance outside of the limits of said City. The answer also averred that the complainant did not own taxable property to an amount exceeding $12,000. That he owned a half interest in a certain piece of real estate, assessed at $24.000, and that complainant never owned any other real estate in said city subject to taxation. (Pages 13-18, printed record.) That complainant owned a pleasure yacht valued on the assess-

ment rolls of said city at $1,300, but defendants were not aware that it was subject to taxation in said city, and that the same was sometimes tied up in said city, and sometimes at the complainant's residence on the south bank of the St. Johns River about a mile from the City of Jacksonville. That the complainant owns no other property in the City of Jacksonville and has never paid any taxes therein. "That no taxes have ever been assessed by the said City against complainant, with the single exception that in the year 1893 there was assessed against him a pleasure yacht valued at $1,300.

On October 23, 1894, the complainant filed his application for injunction as prayed for in the bill and amendments thereto, and set the cause down for hearing upon said application "on the grounds set forth in the amended bill of complaint and the amendments thereto filed by leave of Court, *and the written documents and affidavits in support of the averments in the bill*, and upon the answer of the said city and exhibits thereto." (Page 25, printed record.) This application was renewed November 9th, 1894, (page 35, printed record), and application was also made to set aside the previous order denying the said injunction. The Court thereupon, on December 4th, 1894, made its order denying said motion, and dismissing the bill for want of jurisdiction. The Court filed a written opinion stating the issues before it and the facts presented by the pleadings and proofs, and the reasons which led to the action of the Court in dismissing the bill. (Pages 41-45, printed record.

ARGUMENT.

We shall discuss the questions arising on this record under ~~five~~ six principal propositions, as follows:

I.

The Question of Jurisdiction Must be Certified by the Circuit Court.

The act of March 3d, 1891, Section 5, providing for appeals in certain cases from the Circuit Courts to the United States Supreme Court, provides, in paragraph 1, "in any case in which the jurisdiction of the Court is in issue; in such cases the question of jurisdiction alone shall be certified to the Supreme Court by the Court below for decision," This provision of the act requires action of the Circuit Court in certifying the question of jurisdiction to the Supreme Court for its decision. The clear purpose of the act was to give the right of review only in the manner prescribed therein, and was intended to save the Supreme Court from having to examine the whole record in order to ascertain the question raised by the appeal. Unless the purpose of the act was to require the question to be *certified* by the Circuit Court to the Supreme Court, there would be no necessity for adding these words to the preceeding portion of the paragraph. The revisory powers of the Supreme Court and Courts of Appeals are to be exercised only in accordance with its provisions. This Court has distinctly held, in United States vs. Jahn, decided Nov. 5th, 1894, 15 Supreme Court Rep. page 40, 41, "If in such cases a final judgment were rendered because of the want of jurisdiction, that judgment could be reviewed by this court on the certificate of the Circuit Court." Again, "The provision that any case in

in which the question of jurisdiction is in issue may be taken directly to this court necessarily extends to other cases than those in which the final judgment rests on the ground of want of jurisdiction, for in them that would be the sole question, and the certificate, though requisite to our jurisdiction under the statute, would not be in itself essential, however valuable in the interests of brevity of record." The court continues: "If the jurisdiction of the Circuit Court is in issue, and decided in favor of the defendant, as that disposes of the case, the plaintiff should have the question certified, and take his appeal or writ of error directly to this Court." Speaking of this part of the Act of 1891, Chief Justice Fuller said in Maynard vs. Hecht: "And the section under consideration declares in express terms that when the case is brought directly to this Court the question of jurisdiction so in issue shall be certified for decision."

Maynard vs. Hecht, 151 U. S., 324.

Moran vs. Hagerman, 151 U. S., 329.

This Court, in the opinions just referred to, clearly decides that the certification of the question of jurisdiction is necessary to the exercise of appellate jurisdiction by the Supreme Court under the statute, and no such certification appears in this record. The certificate of the clerk to the record shows that this court has before it only so much of the record as the counsel for appellant selected and had put into the record, so that this Court has before it neither the question of jurisdiction, nor a complete record of the cause.

II.

The jurisdictional amount in this case is the proportion of the bonds complainant would have to pay.

The matter in dispute in the cause as to the complainant is the amount of taxes he will be compelled to pay by reason of the issue of the bonds. He, as a tax-payer, may complain of what affects him. But the amount of the bonds is not the matter in dispute as far as the complainant is concerned, nor is the value of his property. It the case of Russell vs. Stansell, 105 U. S., 303, this Court stated the principle controlling the jurisdictional amount in cases of this character, as follows: "An injunction, if granted, would necessarily be to prevent the appellee from collecting from the real estate of the owner the amount for which it is separately liable." "Although the amount due the appellee from the Levee District exceeds $5,000, his claim on the several owners of property is only for that sum assessed against them respectively." "Any owner can relieve himself and his property from all further liabilities for the tax by paying his part of the assessment." In this case, the complainant can relieve himself and his property by paying his part of the assessment, and therefore the taxes that would be assessed against his property during the life of the bonds on his property subject to taxation in the test of the jurisdictional amount.

Again, in the case of Adams vs. Douglass County, McMahon, 235, (1 Fed. Cases, 107), the Court says: "If in any proper sense, the sum of three hundred thousand dollars, the amount of bonds the issue of which is asked to be enjoined, may be said to be in controversy, then of course, in the first case, no question can exist. There is a sense in which this amount may be said to be in controversy. But is it in a sense which will determine the question in favor of complainant? To be in controversy cer-

tainly cannot, properly, be understood in any other sense than as being in an attitude to be decided in favor of, or against the party who asks the interference of the court. While the amount is really the subject of which the Court is asked to adjudicate, it is not the amount which the complainant claims that he is in jeopardy of losing by the respondents unless they are restrained." The Judge in this case also quotes from an opinion by Judge Miller in the case of Jewett vs. The Treasurer of Laurence County, which was a suit to enjoin the Treasurer by a tax-payer, the relief being refused because the amount in controversy did not exceed $500.

Woodman vs. Ely, 2 Fed. R., 839.

Woodman vs. Latimer, 2 Fed. R., 842.

Murphy vs. East Portland, 42 Fed. R., 308.

Metcalf vs. Watertown, 128 U. S., 586.

King vs. Wilson, 1 Dillon, 555.

A recent case on this subject is El Paso Water Co. vs. El Paso, 152 U. S., 151, which was a bill to enjoin the City Council of El Paso from establishing water works and selling and negotiating certain bonds for that purpose. Among other allegations, the bill averred that if the bonds were issued the company would be compelled to pay taxes to provide a sinking fund to pay the same. The Court states the rule applying to this contention in the following language: "It must affirmatively appear that the acts charged against the city and sought to be enjoined would result in its damage to an amount exceeding $5,000. So far as respects the subject of the taxes which by the issue of the bonds would be cast on the property of the complainant, it is enough to say that the amount thereof is not stated, nor are any facts given from which it may be fairly inferred." And the appeal was dismissed for want of

jurisdiction, because it was not *affirmatively* disclosed by the record that the amount in controversy exceeded the sum or value of $5,000.

These cases determine that the complainant's own interest, that is, the amount he may have to pay by reason of the alleged issue of bonds, is the test of the jurisdiction of the Court. The cases cited by the appellant's counsel are not applicable to the question raised by this appeal. The only one of them that even incidentally touches the question in issue, is Brown vs. Trousdale, 138 U. S., 389. The principal question decided in that case was the removal of the cause to the Federal Court, and the jurisdictional question as to the amount involved arose only incidentally as to the jurisdiction of the Supreme Court itself. The statement of the facts of the case shows that the bill was filed by several hundred tax payers jointly for themselves and others, numbering about twelve hundred, as well as "for and on behalf of all the other tax payers of Mullenburg County, and for the benefit likewise of said county." Thus it appears in effect that all the tax payers of the county were complainants to the bill, and that several hundred mentioned by name were made complainants. It further appeared that two of the bond holders made themselves parties defendant by name, and all other of said bond holders as a class. It further appeared that two non-resident bond-holders, one to the amount of $1,400 and another to the amount of $7,000, came in and made themselves parties defendant. The object of the bill being the cancellation of the bonds, the Court clearly had before it the interests of all the complainants and defendants, giving it the necessary jurisdictional amount. This is a very different case from that at bar, where a single alleged tax payer seeks to enjoin the issue of these bonds, and does not show the amount of the bonded indebtedness he would have to pay in case of the issue of the same. The

case of Crampton vs. Zabriskie, 101 U. S., 601, was a suit brought to enjoin a judgment already obtained in the Federal Court. This fact was sufficient to give the Federal Court jurisdiction, without regard to the amount of taxes payable by the complainant. That suit could have been brought in no other Court than the Federal Court, where the judgment was obtained. The other cases referred to by complainant's counsel are not analogous to the case at bar.

After the hearing on the application for injunction and the first ruling of the Court thereon, and after the Court had orally announced its decision, the complainant made a motion in general terms for leave to amend his bill by adding the names of other persons as complainants to make up the jurisdictional amount. This motion was properly denied. The complainant in his motion did not state the name of any person or persons whom he desired to make parties complainant, or the amount of taxes they would severally be compelled to pay by reason of the issue of the bonds. Nor did he state the amount or value of the property owned by such parties, so that the Court had nothing before it to show a case of jurisdiction. This was necessary, because *each* complainant must have the jurisdictional amount of interest in the controversy.

And the motion did not state that each complainant or all the complainants together had the jurisdictional amount of interest in the subject matter of the suit.

The case as stated in the bill not showing jurisdiction, and the Court having no jurisdiction of the case, jurisdiction could not be created by making a new case by amendments to the bill. The proposed amendment was not made in time. It came too late, as shown by the opinion of the Court in this record.

III.

The jurisdictional amount is not affirmatively disclosed by the record.

The complainant in his bill or amended bill did not state a case entitling him to the relief of the Court below, and the bill was properly dismissed for the reason that it did not make it clear that the Court had jurisdiction of the controversy. The bill, in stating the complainant's interest in the litigation, alleges that "he is the owner of property, real and personal, situate, lying and being within the corporate limits of the said City of Jacksonville, and that the said property is subject to taxation by the said City and the officers thereof * * * and that your orator's said property within the limits of the said City of Jacksonville, to the value of *about* $10,000, is subject to assessment for taxation to raise revenue to pay interest on said bonds, and to provide a sinking fund to pay the same." These are all the allegations which the Court below had before it from which to determine the jurisdictional facts. But from the face of the bill it would easily appear that the interest of the complainant in the litigation was not equal to $2,000. The complainant thereupon sought to improve his bill by amending that portion of it containing the allegations as to jurisdictional amount, by alleging that he was the owner of property, real and personal, situate, lying and being within the corporate limits of the City of Jacksonville, and that said property was subject to taxation by the said City and its authorized officers. That complainant was a non-resident tax payer in said City. In paragraph two of said amended bill it is stated: "And that your orator's said property in the limits of said City of Jacksonville, to the amount and value of *about* $50,000, is subject to taxation to raise revenue * * * and that the total value of the property

within said City was $13,011,290," of which $10,054,950 was the value of the real estate, and $2,356,340 was the value of the personal property. The amended bill was filed May 21st, 1894. The amended bill was sworn to May 28th, 1894, and the statements of the affidavits are as follows: "That all the matters-of-fact set forth in the amended bill of complaint filed in the above entitled cause, are true to the best of his knowledge, information and belief, except that it may be true as a matter of law that some of the deponent's property within the City of Jacksonville may not be legally taxable by the city authorities, but this deponent says that the taxes assessable and that will be assessed upon his property within the limits of the said city to pay the interest on the bonds mentioned in the bill and to accumulate a sinking fund to pay the principal, will amount to much more than $2,000 before the maturity of the said bonds."

The allegations of the amended bill referring to the property of the complainant alleged to be situated in the City of Jacksonville, are too vague and indefinite, both as to the actual character of the property and the assessed value of the same to give the Court any reasonably certain data upon which to calculate the complainant's interest in the subject-matter of this litigation No definite amount of property is stated as being owned by the complainant, the allegation being that he owned property to the value of *about* $50,000. This is not a definite statement either as to the assessed or actual value of complainant's property. The allegation that this property is subject to assessment for taxation is a conclusion of law which the Court must decide where the facts are stated in the bill showing the character and location of the property.

The complainant alleges that he is a non-resident taxpayer, therefore only his real estate and permanently located personal property would be subject to taxation to pay these bonds, and being a non-resident he must show and

describe his property. The bill alleges that he is the owner of property, real and personal, within the limits of the said city, to the value of about $50,000., subject to assessment for taxation. But the bill does not state how much of this property is real and how much personal.

The bill alleges that the complainant's property to an amount of about $50,000 is subject to assessment, and then states the total assessed value of the property as a basis upon which to ascertain the amount or proportion of the taxes the complainant will have to bear. If the assessed value of the whole property in the city is taken as one of the elements entering into this calculation, then the complainant should state the assessed value of his property as the other element.

The complainant having stated in his original bill that the value of the property was about $10,000, and having stated in his amended bill that the same property was worth about $50,000. there being no other description of this property except that contained in the bill, the Court was left in doubt as to what property the complainant did own in the City of Jacksonville, and what tax, if any, he would have to pay. The bill does not state what amount of taxes if any, would be cast on the propertyof the complainant nor are any facts given from which it could be fairly interred The affidavit to the amended bill (page 24 printed record) qualified the allegations of the amended bill, as follows: "except that it may be true as a matter of law that some of the complainant's property in the said city may not be legally taxable by the said city authorities." This rendered the subject of the property of the complainant and its assessed valuation, if any, entirely uncertain and dependent upon a judicial determination after a discription of his property had been given as to whether it was taxable or not.

The appellant in his brief says that this statement was put into the affidavit for fear that the defendant would assess

some part of the complainant's property which the defendant had no right to assess. In other words to leave it uncertain as to what part of the complainant's property was subject to tax, and what not.

The bill or the amended bill should have stated in the body of the same the exact amount of taxes the complainant would have to pay by reason of the issue of the bonds sought to be enjoined. The Court would then have had before it definite, traversable facts, and would not have been compelled to figure it out from the value of the complainant's property and the value of the whole property assessed in the city. If the amount of possible taxes were not thus stated, the complainant should either have described his real and personal property in the City of Jacksonville and stated the assessed value of the same, or the actual value of the same with definiteness. And if he stated the actual value, then he should also state the actual value of the other property in the city. But none of this has been done.

Even if the complainant had stated definitely the present value of his property and the present value of all the property in the city, the result would have been uncertain and a calculation made necessary, and the whole allegation more indefinite than if complainant had stated the exact amount with which his property would have been charged by the issue of the bonds sought to be enjoined. All the authorities hold that the jurisdictional allegations in the Federal Courts must affirmatively appear on the face of the pleadings, and the jurisdictional amount in this case does not appear on the face of the complainant's original or amended bill, and it was properly dismissed for that reason.

El Paso Water Co., v. El Paso, 152 U. S., 158.

Adams vs. Douglass County, McMahon, 235 (1 Fed. Cases, 107.)

Grace vs. Am. Cent. I. Co., 109 U. S., 278, 281.

IV.

The Issue of Jurisdiction May be Investigated at any Stage of the Proceedings.

Under section 5, Act March 3rd, 1875, (18 Statutes at Large, 470), Circuit Courts are required whenever it shall appear to the satisfaction of the court at any time that the suit does not really and substantially involve a suit or controversy within the jurisdiction of the Court to dismiss the same. The effect of this act has been considered by the Supreme Court in several cases. In the case of Morris vs. Gilmer, 129 U. S., 315, 325, the Court says: "But if the record discloses a controversy of which the Court cannot properly take cognizance, it is the duty of the Court to proceed no further and to dismiss the case.' " 'The rule is inflexible and without exception', as was said on full consideration in the case of Mansfield Ry. vs. Swan, 111 U. S., 379, 382, 'which requires this court of its own motion to deny its own jurisdiction, and in the exercise of its appellate power that of all the other courts of the United States in all cases in which such jurisdiction does not affirmatively appear on the face of the record, on which it in the exercise of that power it is called to act,' " See also:

Kingbridge County vs. Otoe County, 120 U S. 225.
Grace vs. American Centr. Ins. Co., 109 U. S. 278.
Blacklock vs. Small, 127 U. S., 96, 105.

It was also decided in the case of Morris vs Gilmer, *supra*, that while under the judiciary act of 1789 an issue as to the fact of citizenship could be made only by a plea in abatement, when the pleadings properly averred citizenship of the parties, the act of 1875 imposes on the

Circuit Court the duty of dismissing the suit if it appears' at any time after the suit is brought and before the final disposition of the case, that it does not really and substantially involve a controversy of which the Court may properly take cognizance.

Williams vs. Nottawa, 104 U. S., 209.

Farmington vs. Pillsbury, 114 U. S., 138, 143.

Little vs. Gills, 118 U. S., 596, 602.

Continuing the Court says: "And the statute does not prescribe any particular mode in which such fact may be brought to the attention of the Court. It may be done by affidavits, or the depositions taken in the cause may be used for that purpose. However done, it should be upon due notice to the parties to be affected by the dismissal."

Hartog vs. Memory, 116 U. S., 588.

The Supreme Court itself will dismiss a cause for want of jurisdiction even where the question is not raised by the parties themselves in that court or the court below.

Metcalf vs. Watertown, 128 U. S., 586.

Graves vs. Corbin, 132 U. S. 571, 590, and cases cited.

It thus appears that whenever it is apparent to the court that a cause is not within its cognizance, it should investigate that question at any stage of the proceedings. And, as stated in the case of Morris vs. Gilmer, *supra*, there is no particular method for the conduct of such an investigation, and it may be done by affidavits. The court in the case at bar investigated this question, with the knowledge of the complainant, and found that the amount involved did not exceed the sum or value of $2,000. This issue was distinctly made by the answer, and the complainant by his motion for an injunction, (page 25 printed record) brou ht on this issue for hearing; for

he put the matter down for hearing on "the bill and amended bill and the amendments thereto, and on the answer of the said city and the exhibits thereto," in all of which this issue of jurisdiction was distinctly made. Affidavits were filed on this question at the hearing by the defendants in support of the answer, showing that the interest of the complainant in the subject matter of the suit did not exceed the sum or value of $2,000.

See affidavit of Jno. R. Thurber, page 28, printed record.

Affidavit of E. W. Vail, page 31, printed record.

Affidavit of Chas. Verelst, page 32, printed record.

The complainant clearly understood that the question of jurisdiction was raised by the defendants in their answer and the affidavits in support thereof, and in fact he filed the affidavit of A. G. Hartridge, (page 30, printed record) to establish his citizenship in Chicago, Illinois, which was in issue, having been disputed by the answer. The Court finds in its opinion, (page 44, printed record) that this issue of jurisdictional amount was made by the bill and answer. That every opportunity was given complainant, and he had filed affidavits on other questions, and after a hearing occupying nearly three days, "no desire was expressed to introduce further proofs on the question of jurisdiction". That on this issue of jurisdiction thus made and the proofs introduced, the court was satisfied that the complainant had failed to show that his interest in the controversy exceeded the sum of $2,000, and dismissed the bill. The appellant in his brief states that the appellant and his counsel were greatly surprised at the result, but with these findings of fact and the hearing of the question of jurisdiction and the opportunities given complainant to file affidavits on the matter, they were not surprised in the sense of not being permitted to introduce proofs of the

amount of property owned by the complainant in the City of Jacksonville, or the amount of taxes his property would would have to pay in case of the issue of the said bonds. The Court in its opinion properly says that it was peculiarly in the complainant's power to produce affidavits if he had such an interest.

The appellant's contention is that the Circuit Court acted prematurely in dismissing his bill. That it should have waited until replication was filed and testimony taken before an examiner in the regular course of proceeding. The result of such practice would have been to delay the course of the proceedings for three months after issue joined. It was not necessary to await the outcome of these proceedings to determine the question of jurisdiction. It would defeat the purpose of the fifth section of the act of March 3rd, 1875, which provides for the summary consideration of the question of jurisdiction, and makes it the duty of the Federal Courts at all times to determine it before proceeding further with the cause. And, as was stated in the case of Morris vs. Gilmer, *supra*, no particular method of trial is necessary, and the question may be raised on affidavits. That was exactly the procedure in the case, the question being raised on the bill, answer and affidavits. It would have been an idle wasts of time to investigate and determine all of the many questions raised by the record, and to pass on the merits of the case, or to have sent the cause to an examiner to take testimony in all these issues, where this preliminary question of jurisdiction was undetermined, on which the case might be decided without reference to the other questions raised.

If the Court should find that the allegations of jurisdictional amount in the bill and amended bill are sufficient to make a case of jurisdiction on the face of the plaintiff's pleadings, and if it became a question of fact to be determined by the Court, we say that the issue was properly

tried, and the facts sustain the conclusions reached by the Court below. The original or amended bills do not describe or point out what property the complainant did own in the City of Jacksonville, or what amount of tax his property would have to bear in event of the issue of the bonds. The amount of the taxes complainant's property would have to pay appears to be worked out by the appellant's counsel in his brief on the basis of the higher amount of value stated in the defendant's proofs. The complainant in his bill and amended bill leaves it entirely uncertain as to what he intended to allege or could prove as to the real character, amount and value of the property owned by complainant subject to taxation within the said city. Having amended his bill by attempting to state an entirely different amount for the purpose of giving the court jurisdiction, and then limiting and qualifying the statements of his bill by his affidavit, to-wit: That some of his property might not be legally taxable in said city, he clearly showed that he was unwilling to disclose to the Court what property he owned in the City of Jacksonville, or what its value was. The Court had a right to conclude from these allegations of the complainant and from his failure to make any proof that the vague statements in the bill in reference to his taxable property were made to give colorable jurisdiction to the Court when the Court did not have jurisdiction of the case as it really was.

The only facts furnished the Court on which it could determine the amount of property subject to taxation in the City of Jacksonville owned by the complainant, was found in the allegations of the defendant's answer, and the affidavits filed by the defendant, which are briefly as follows: The answer alleges that the complainant owned a half interest in a piece of real estate which was conveyed to him in consideration of $5,000, subject to liens upon the whole of said lot, amounting to $17,000. That the entire lot was assessed at $24,000, and that was about its full cash value,

and that complainant owned no other real estate in the City of Jacksonville. That he owned a pleasure yacht assessed at $1,300, but that complainant did not reside in the City of Jacksonville, but on the south shore of the St. Johns River about a mile from the city, and sometimes the said yacht was moored in the city and sometimes at complainant's residence, and defendants do not know whether the said yacht is subject to taxation in the said city or not. That complainant has never paid to the city one cent of taxes on any property, real or personal.

The affidavit of John R. Thurber (p. 28, printed record) states that in his opinion a fair value of the said property would be $27,000. That he is the tax-assessor of the City of Jacksonville, and that the said John H. Colvin has not made any returns of property for the year 1894, as required by law of all persons owning personal property subject to taxation in the City of Jacksonville.

The affidavit of E. W. Vail states that he is the manager of an Abstract Company doing business in the City of Jacksonville. That he has examined the records of the county in which said city is situated for the purpose of ascertaining what property is or has been owned by the said John H. Colvin in said city, and that the said records do not disclose any other property owned by said Colvin than the interest in the said lot mentioned in the affidavit and answers.

The affidavit of Chas. Verelst states that he is the County Assessor of taxes. That he has made diligent inquiry to ascertain the taxable property of John H. Colvin, and that said half interest in said lot is the only real estate owned by him in the City of Jacksonville, Fla. In his opinion the value of the whole of said piece of real estate is about $28,000, and the value of a half interest is about $14,000. The value of said pleasure yacht he fixes as about $3,000.

It would thus seem that an investigation made from all the available sources shows that the only property owned by John H. Colvin in the City of Jacksonville was an undivided one-half interest in a piece of real estate, which, according to some accounts, was valued at $12,000, and according to others at $13,500 and $14,000. The Court in arriving at its conclusion in regard to the amount of taxes the complainant would have to pay during the life of the bonds, took the highest value placed on the half interest in the said piece of real estate. This was the most favorable view of the case that could be taken for the complainant. The Court also arrived at its conclusion by calculating the taxes on the assessed value of the property in the said city, to-wit: $13,011,290. The answer states that the actual value of the property within the limits of the said city was about $20,000,000. So that if in arriving at its conclusion of the amount of taxes the complainant would have to pay on his part of the said piece of real estate, the calculation is made on the basis of the actual value of ~~the~~ property, it would have been more accurate to have made the calculation on the basis of the actual value of the whole taxable property in the city, which is stated to be $20,000,000.

It is stated in the appellant's brief that the calculation of the amount of taxes payable by complainant cannot be made on the basis of the half interest in the said property, but that it should be made upon the basis of the whole tract. The answer to this is complete and conclusive. The laws of Florida authorizing taxation by the City of Jacksonville provide for assessing by the names of the owners in alphabetical order the property severally owned by them.

"SECTION 1. All property which is subject to State taxes shall be assessed and listed alphabetically for the entire city, in the name of the owner, whenever the name

of the owner is known to the assessing officer, or when the property has been returned as herein provided for."

"SEC. 2. All persons, corporations and firms owning property, whether real or personal, subject to taxation within the city of Jacksonville, are hereby required to make returns of the same before the first day of August, 1893, and before the first day of March, in every year thereafter, to the comptroller of said city.

"SEC. 5. Each lot and seperate tract of land shall be assessed separately, except that at the written request of the owner of lots or tracts of land adjoining each other, or when such owner makes return thereof in such manner, such adjoining lots or tracts may be assessed together."

Chapter 4, 300 Laws of Florida, Acts of 1893.

There could be assessed against John H. Colvin only the taxes on the property owned by him, to-wit, the half interest in this real estate. There is no authority in the city to assess whole of the lot to John H. Colvin, or to make him pay, by the sale of the property or otherwise any other piece of property for taxes except the specific piece assessed. John H. Colvin had nothing to do with the taxes on any other property except that which he owned, and he had the right to demand that his half interest should be assessed separately, and to pay taxes on that without regard to any other piece.

The owner of an undivided half interest in real estate may have his interest in the property separately assessed, and when separately assessed may satisfy the lien on his part of it by paying the tax.

The city would have no lawful authority by assessing the entire lot to one or more owners under one assessment to compel different owners of separate interests in the

lot to pay the tax on the entire lot. But each owner would have the right to pay the tax thereon, and in view of the further fact that the allegations of residence, and the proof showing his residence in Florida outside of the City of Jacksonville; and in view of the further fact that although the yacht mentioned in the answer had been assessed at $1,300, the complainant had never paid the taxes thereon; and, as shown by the affidavit of Comptroller Thurber (page 25, printed record) said complainant had never made any return to the assessor. These facts clearly disclose that while the complainant was a resident of Duval County, Florida, he was not a resident of Jacksonville, and his personal property could not be legally assessed in the city of Jacksonville. And if, as he contends, he is a resident of Chicago, Illinois, his personal property not permanently held in the City of Jacksonville, certainly could not be legally assessed by said city. Personal property is, for the purposes of taxation, deemed to be located in the jurisdiction of the permanent residence of the owner.

How the appellant's counsel can argue in his brief that this property can be added to the taxable property of the appellant in the City of Jacksonville for the purposes of giving the Federal Court jurisdiction, and at the same time insist that the appellant is not a citizen or resident of said city, we do not understand. Or how the appellant can make such a contention and yet never make a return of this or any other personal property and never pay the tax on the same, we also find incomprehensible. The fact of the whole matter is that the appellant's half interest in the piece of real estate mentioned in the answer and affidavits is the only tangible property any where disclosed in this record by complainant's pleadings or the answer and affidavits as belonging to the complainant and subject to taxation in the city of Jacksonville.

V.

The Amount in Controversy in this Case is Only $1,114.60.

The court in its opinion (page 44, printed record) makes a finding of facts as to the amount of taxes that will have to be paid by complainant during the existence of the issue of bonds sought to be enjoined, to wit, thirty years. The court finds in order to pay the sinking fund of one million dollars in thirty years, complainant's property, valued at $14,000.00, would have to pay $35.90 a year, or $1077 in thirty years.

That in order to pay interest at five per cent. on these bonds, or $50,000.00 a year, the amount of tax for the first year on complainant's property valued at $14,000.00 would be $53.85, and each year thereafter this amount would decrease by reason of the interest arising from the investment of the sinking fund, being applied to the interest on the bonds. Or, in other words, by reason of the principal being decreased one thirtieth each year, the amount necessary to be raised for interest would decrease in a gradually lessening ratio, each year. That is, one-thirtieth the first year, two-thirtieths the second year, and the same proportion each year thereafter.

To pay five per cent. interest on $1,000,000. or $50,000. per annum, assessed on a value of $13,000,000 would require for the first year the levy of a tax of three mills and 8464—10.000, or .038464 per cent. and a tax at this rate on complainant's property, valned at $14,000.00, would be $53.83 for the first year.

A sinking fund must be raised in thirty years to pay

one million dollars. This would necessitate the raising of $33,333.33 per annum.

To raise this sum on a total valuation of property estimated at $13,000,000.00, would require a levy of two mills and 564/1.000 or .02564 per cent. A tax at this rate on complainant's property valued at $14,000.00 would be $35.90 a year, which in thirty years would amount to $1,077.00.

The portion of the sinking fund complainant would have to pay each year would amount to $35.90, which ininvested each year at the same rate, to wit, five per cent. would produce a sum gradually reducing the amount necessary to be paid in by complainant either as interest on the bonds or subsequent payments on the sinking fund. If applied on interest on bonds (the installments of amounts to be paid by plaintiff on interest being $53.83 for thirty years, or aggregate of $1,615.00) thus reducing of interest year by year would make the whole amount of interest to be be paid by complainant $807.75, instead of said Sum $1615.00.

Interest tables will show that payments into the sinking fund of $35.95 a year, invested year by year would aggregate an amount of earnings, which subtracted from $1,615.00 would leave the said sum of $807.75. $1,615.00 is the amount of interest on bonds complainant would have to pay, if there were not a gradual decrease by reason of the payments and investment of the sinking fund as required by law. $807.75 represents the total interest on bonds complainant would be called upon to pay, taking into consideration the gradual reduction by reason of the investment of the sinking fund. These earnings of the sinking fund raised by investing it, at 5 per cent. can be deducted either from the taxes to be paid on the interest or the sinking fund year by year. To illustrate, if the first years sinking fund of $33,333.33 could be invested in that amount of bonds the result would be that the years

amount of taxes to pay interest for the next year would be reduced by the amount of interest on $33,333.33 of bonds.

By applying these principles to the amount of taxes which would be paid on complainants property, valued at $14,000.00, it will readily be seen that the court's figures are correct when it says that the amount to be paid by complainant during the life of the bonds is $1,884.60. In point of fact, if the earnings of the sinking fund are constantly invested, the amount to be paid by the complainant would be less than that sum, because each installment of interest would be re-invested and bear interest.

The Court refers to the further fact that there is now a bonded indebtedness of $200,000.00 bearing interest at 8 per cent. upon the territorial limits of Jacksonville, which existed prior to May, 1887. This is referred to on pages 16 to 17 printed record. The annual levy to meet interest on these bonds is $16,000.00; about on a basis of 5 per cent. it would be $10,000 making a saving of $6,000.00 to the city and a proportionate amount to the complainant on his property. The Court finds that the complainant would have to pay on account of a former issue of bonds $420 for interest and and $360 sinking fund, or an aggregate of $770.00. That a lien of that amount now exists on his property, and that the increase by reason of the new issue is the difference between $770.00 and the total he would have to pay on the new bonds, to wit $1,884 60, that is $1,114.60. So that in reality the taxes the complainant must pay for this particular issue would be only $1,114.60 which is of course an amount very much less than the amount necessary to give the Court jurisdiction.

The appellant in his brief says that the Court below had no right to assume that the former issue of $200,000 would be refunded by a part of the present issue of one

million dollars. The laws of Florida authorizing this issue, to wit, chapter 4239 of the acts of 1893, in stating the purposes of the issue, provide in terms "which bonds shall be used in refunding the bonds of the city now outstanding." Among the purposes for which the bonds provided by ordinance No. B. 168, Sec. 5, was as follows: "for the purpose of redeeming or refunding of the bonds of the city now outstanding".

The same chapter, 4232 also provides as follows: "the Mayor and City Council shall levy annually such tax or taxes on the property within the corporate limits as may be necessary to pay interest on said bonds, and provide a sinking fund for the payment of said bonds".

If these calculations were made on the basis of the assessed value of complainants property to wit, $12,000.00 or the actual value of the entire property in the city, to-wit $20,000,000.00 even under the complainants mode of stating the amount of taxes complainant would have to pay, that amount would be less than $2,000.00, and this without regard to the investment of the sinking fund and the gradual reduction of the amount necessary to be raised.

Counsel for appellant in his brief attempts to make out a case of jurisdiction in the court below by stating that to the amount to be paid by the complainant in taxes must be added interest. There is no merit in this contention. The acts conferring jurisdiction on the Federal Courts, to wit, the act of March 3d, 1887, and March 3d, 1875, provide that the Circuit Court shall have original cognizance of certain cases where the matter in dispute exceeds, *exclusive of interest and costs*, the sum or valu e of $2,000. Of course the fact that this is a claim for interest to be recovered during thirty years to come only strengthens the reasons why it does not enter into the

jurisdictional amount. If past due interest, which is a fixed debt, cannot be included in the amount necessary to give jurisdiction, surely such an uncertain and dubious claim as interest to become due would never enter into the amount necessary to confer jurisdiction. The status of the complainant as to his interest in the controversy, must depend on what he has to pay to relieve his property from the lien of the bonds whose issue is sought to enjoined. To allow interest on the taxes complainant would have to pay, would not only violate the acts of Congress conferring jurisdiction on the Federal Courts, but would also violate the rule of law which requires a party to sue on a present claim and not on a future event that or may not happen.

VI.

The Hearing was Final.

The complainant in the Court below on the 23rd of October 1894, gave notice to the defendant of his intention to apply for "a writ of injunction and the appointment of a Receiver as prayed for in and by the bill of complaint in this cause and the amendments thereto filed by leave of Court." And that he would make this motion "on the grounds set forth in the amended bill of complaint and the amendments thereto filed by leave of Court, and the written documents and affidavits in support of the averments in the bill, and upon the answer of said city and the exhibits thereto." The only purpose and object of the bill and amended bill was to obtain an injunction to restrain the issue of the bonds, and, if they are outstanding, to obtain a receiver for the same. These were also the objects of relief sought by the setting down of the cause by the complainants. The application is not for a tempor-

ary or preliminary writ of injunction, nor any provisional order. It is for all the full and final relief prayed for in the bill.

This hearing was an abandonment of the exceptions to the answer. The notice distinctly states that the hearing was "on the answer of the said city and the exhibits thereto." No more apt language could be used to set down the cause on bill and answer than was used in said notice. When a cause comes on for hearing at the instance of the complainant on bill and answer, and relief asked at said hearing is all the final relief prayed in the bill, or which could be granted after issue joined, and evidence taken, the complainant thereby consents to waive replication and regular taking of evidence and sets down the cause for final disposition.

If this is not so on the issues involved in the merits it is certainly true as to the preliminary issues of jurisdiction, which could be heard at any time and tried in any mode the Court might direct, particularly where such hearing of that issue was brought on by the complainant himself.

Upon a review of all the reasons the court had for refusing jurisdiction and dismissing the bill it is apparent that the court was justified in its action, as shown by the bill and answer, the complainant was seeking to have the Court investigate through the slow process of legal proceedure the validity of certain State legislation and various ordinances of the City of Jacksonville, the election under which the issue of bonds were authorized, together with the acts of the various city and county officers in regard to the registration of voters. The complainant sought to have the court restrain the issue of bonds or place them in the hands of a receiver, thus stopping the application of the

proceeds of the bonds to the necessary public purposes set out in the answer, until complainant could litigate all of the matters above referred to.

The Court saw that the question of jurisdiction should be settled at once. A complainant who as a tax payer seeks the action of the Court to enjoin another branch of the Government from exercising its functions under the laws of the State unquestionably should make it clear to the Court that the matter in dispute as to him equaled the amount required to give jurisdiction to the Court in this case.

This the complainant completely failed to allege or prove, and we submit the bill was properly dismissed.

Respectfully submitted,

J. C. COOPER,
of Counsel.

For appellees.